85-541

No.

Supreme Court, U.S.
FILED
SEP 27 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

BARCLAYSAMERICAN/CREDIT, INC.,
Petitioner,

v.

ARTHUR QUILLER, LILLIE MAE QUILLER, and
All Other Persons Similarly Situated,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

DOUGLAS N. CAMPBELL, ESQ.
Counsel of Record
LAURA E. STEVENSON, ESQ.
MITCHELL, LOGGINS,
CAMPBELL & ELSBERRY
Suite 950, The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 658-1400

Attorneys for Petitioner

105 pp

APPENDIX
TABLE OF CONTENTS

Appendix		Page
A	*Quiller et al. v. BarclaysAmerican/ Credit, Inc.*, No. 83-8455 (11th Cir. July 8, 1985) (*en banc* rehearing) (decision being reviewed)	A1-A9
B	*Quiller et al. v. BarclaysAmerican/ Credit, Inc.*, 727 F.2d 1067 (11th Cir. 1984) (panel decision)	B1-B10
C	Order Granting Motion To Dismiss entered June 14, 1983, *Quiller et al. v. BarclaysAmerican/Credit, Inc.*, Civil Action Case No. 183-87 (United States District Court for the Southern District of Georgia, Augusta Division) (J. Bowen).....	C1
D	*Grant et al. v. General Electric Credit Corporation*, Case No. 83-8456 (11th Cir. July 8, 1985) (*en banc* rehearing)	D1-D13
E	*Grant et al. v. General Electric Credit Corporation*, 727 F.2d 1073 (11th Cir. 1984) (panel decision)...	E1-E4
F	Order Granting Motion To Dismiss entered June 14, 1983, *Grant et al. v. General Electric Credit Corporation*, Civil Action Case No. CV183-96 (United States District Court for the Southern District of Georgia, Augusta Division) (J. Bowen)	F1
G	Depository Institutions Deregulation And Monetary Control Act of 1980, Pub. L. No. 96-221, Title V § 501, 94 Stat. 164 (March 31, 1980), codified at 12 U.S.C. § 1735f-7 note.	G1-G6
H	12 C.F.R. § 590.4(h)	H1-H2

I	The Quiller Contract	I1-I4
J	Letter dated October 28, 1982, from Thomas P. Vartanian, General Counsel, Federal Home Loan Bank Board, to D. Edwin Schmelzer, Esq.	J1-J2
K	*Amicus Curiae* Brief of Federal Home Loan Bank Board (before the three judge panel)	K1-K18
L	*Amicus Curiae* Brief of Federal Home Loan Bank Board (before the En Banc Panel)	L1-L19
M	The Quiller Complaint	M1-M11

APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

NO. 83-8455

Arthur QUILLER,
Lillie Mae Quiller,
and all other persons
similarly situated,

Plaintiffs-Appellants,

v.

BARCLAYSAMERICAN/
CREDIT, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

Decided: July 8, 1985.

Before GODBOLD, Chief Judge, RONEY, TJOFLAT, HILL, FAY, VANCE, KRAVITCH, JOHNSON, HENDERSON, HATCHETT, and ANDERSON, Circuit Judges.*

PER CURIAM:

Arthur and Lillie Mae Quiller filed a class action against BarclaysAmerican/Credit, Inc., in the Superior Court of Richmond County, Georgia, alleging a violation of the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. §§ 10-1-30 to -38 (Michie 1982). After removing the case to the United States District Court for the Southern District of Georgia, Barclays moved to dismiss for failure to state a claim, contending *inter alia* that the action was precluded by the De-

* Judge Thomas A. Clark, recused himself and did not participate in this decision.

pository Institutions Deregulation and Monetary Control Act, Pub.L. No. 96-221, Title V, § 501, 94 Stat. 161 (1980) (codified at 12 U.S.C. § 1735f-7 note). The district court granted Barclays' motion to dismiss, but a panel of this court reversed the order of dismissal and remanded the case for further proceedings. *Quiller v. BarclaysAmerican/ Credit, Inc.*, 727 F.2d 1067 (11th Cir. 1984).

On rehearing *en banc*, we agree with the panel's disposition of the case. We therefore affirm and reinstate the panel opinion. The district court's order granting Barclays' motion to dismiss is REVERSED, and the case is REMANDED for further proceedings.

RONEY, Circuit Judge, dissenting, with whom TJOFLAT, JAMES C. HILL, FAY and R. LANIER ANDERSON, III, Circuit Judges, join:

The Court holds *first* that the contract is expressly contrary to the federal statute and regulations comprising the federal preemption scheme because it permits the creditor to foreclose, repossess, or accelerate upon the debtor's default "without notice" and *second*, that the plantiff is entitled to the remedies available under Georgia usury law. I dissent from both of these decisions. Although not a model of clarity, the contract is not necessarily contrary to the federal scheme. The provisions of the contract are at worst ambiguous. Being ambiguous, the contract cannot be held invalid on a motion to dismiss. To the extent the contract is contrary to the conditions required by federal preemption law, there are more suitable remedies that the district court should consider before giving the plaintiff the state usury remedies.

I

As to the provisions of the contract, there are substantial arguments that the contract does not violate the law at all. As noted by the Federal Home Loan Bank Board (FHLBB) in its amicus curiae brief, both the preemption Act and the

agency regulations provide circumstances in which the creditor may repossess, accelerate, or foreclose "without notice." The Act directs FHLBB to issue a regulation that requires

> a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances).

Pub.L. No. 96-221, Title V, § 501(c)(2), 94 Stat. 161 (1980) (codified at 12 U.S.C.A. § 1735f-7 note). The implementing regulations provide:

> Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. . . . The debtor is not entitled to notice of default more than twice in any one-year period.

12 C.F.R. § 590.4(h)(1). Thus, in three separate situations a creditor may in fact accelerate, repossess, or foreclose without giving the 30-day notice otherwise required under section 590.4(h): (1) abandonment; (2) other extreme circumstances; and (3) upon the debtor's third default in a one-year period. Consequently, the contract's assertion that creditor may take action "without notice" upon debtor's default is not, as the court suggests, an "affirmative misrepresentation as to [the debtor's] statutory guarantees." 727 F.2d at 1072.

In all other default situations, the creditor is required to give the 30-day notice. The contract provides that the creditor's express powers to foreclose, accelerate, or repossess are "subject to any notice of right to cure." The court notes that our "[t]he qualification would, at most, inform the debtor that he *may* have a right to cure, but the law guarantees him an *absolute* right to cure." 727 F.2d at 1072 (emphasis in original). As pointed out above, however, the right to cure is not "absolute" in at least three specified cir-

cumstances. Given that the court concedes that the qualifying clause informs the debtor that he *may* have a right to cure, that is all that is necessary. For the court to hold that the creditor had to use language more specific than "subject to any notice of right to cure" undercuts the court's holding that "to qualify for federal preemption under the Act the financing agreement need not contain an express term guaranteeing the debtor thirty days notice before repossession or foreclosure." 727 F.2d at 1071.

It would be inconsistent with federal law for a preemption contract to claim an unqualified right to acceleration, repossess, or foreclosure "without notice." But because in some situations a creditor may indeed exercise such powers without notice, it is not inconsistent with federal law for a preemption contract to claim such a right "subject to any notice of right to cure," the express qualification contained in the Quiller contract. The contract language therefore does not prevent the loan from meeting the "terms and conditions" of the federal statute and regulations.

II

At most the contract would be ambiguous. With that determination, the court should remand for the district court to determine the intent of the parties. The contract was written to be a federal preemption contract. The words "FEDERAL PREEMPTION CONTRACT" appear in the contract in the bottom left corner of the very same page as the language held to be contrary to the federal preemption scheme. The conduct of the parties, the intention to make the agreement a federal preemption contract, and the intent of the borrower to make a legal contract and to pay the higher interest rate become relevant.

In holding that the agreement is contrary to the statute and regulations, the court characterizes the offending provisions as "inaccurate statements of the creditor's rights under federal law." *Id.* at 1072. Be that as it may, the contract does contain the "vague qualification" that its claimed

powers to immediately foreclose, repossess, and accelerate are "subject to any notice of right to cure." The court acknowledges that "[t]he qualification would, at most, inform the debtor that he *may* have a right to cure." *Id.* at 1072 (emphasis in original). In view of the ambiguity created by this "inconsistent language," this case should be remanded to the district court to conduct an evidentiary hearing, if necessary, to determine whether the parties intended to enter a federal preemption contract, and, if so, what was intended by the ambiguous language.

This is not to say, however, that the creditor could receive the benefits of federal preemption were it in fact to exercise its powers upon a debtor's default in a manner inconsistent with the federal statute and regulations. Nor would contract language that, unlike the language in the contract here, was indeed contrary to the consumer protections provided by the Act and regulations be saved by a creditor's actual compliance with the Act and regulations. The case before us, however, on appeal from the district court's order granting defendant's motion to dismiss, presents neither of those situations.

III

Once the "terms and conditions" are established, then the relief a party is entitled to obtain in court is to have the contract enforced according to those "terms and conditions." For a class, this may either be a declaratory decree or an injunction requiring the creditor to follow the contract's "terms and conditions."

In any event, the problem with notice might be easily curable by remedies not as harsh as that held by the court. At most, the case should be remanded to the district court to consider remedies that would preserve the bargain the parties intended to make. There is no question but that the parties intended to contract for a legal interest rate under the federal preemption law. The Georgia law of usury under

O.G.C.A. § 10-1-33 makes the civil penalties of the Georgia Motor Vehicle Sales Finance Act applicable:

> A violation of Code Section 10-1-33 by the seller or holder shall bar recovery of any finance charge, delinquency, or collection charge on the contract.

O.C.G.A. § 10-1-38(b). Asserting that the violation was wilful, the Quillers seek to recover double the time price differential under O.C.G.A. § 10-1-38(c). The penalty provisions do not authorize forfeiture of the unpaid principal of loans held violative of section 10-1-33. *See Bozeman v. Tifton Federal Savings & Loan Ass'n*, 164 Ga. App. 260, 297 S.E.2d 49 (1982); *Kelly v. Sylvan Motors, Inc.*, 160 Ga. App. 420, 287 S.E.2d 359, 360 (1981); *Ford Motor Credit Co. v. Spann*, 153 Ga.App. 535, 265 S.E.2d 863, 865 (1980); *Cook v. First National Bank*, 130 Ga.App. 587, 203 S.E.2d 870, 871 (1974); *see also Barrett v. Vernie Jones Ford, Inc.*, 395 F.Supp. 904, 909 (N.D.Ga. 1975), *aff'd*, 578 F.2d 1185 (5th Cir.1978). Georgia law indicates that the lender may recover this principal through the borrower's continued payments under the contract, unless the borrower was still in default after adjustment had been made to account for the forfeiture of the finance charge. *See Spann*, 265 S.E.2d at 865; *Bozeman*, 297 S.E.2d at 52. Nevertheless, the penalty sought by the Quillers would be harsh in a case where both parties intended to enter into a federal preemption contract governed by federal preemption law, under which the finance charge charged by Barclays/American and agreed to by the Quillers was legal.

Rather than applying state usury laws to require forfeiture of the finance charge, a more equitable remedy might be to invalidate the provisions contrary to federal law and enjoin enforcement of such provisions if necessary to protect the consumer. Such an approach was taken by this Court in a case where a provision of a loan contract violated regulations promulgated under the Georgia Industrial Loan Act. *Robinson v. Central Loan and Finance Corp.*, 609 F.2d 170, 175 (5th Cir.1980). Severance of the objectionable pro-

visions of the loan contract would be consistent with the "well known principle of contract law that an illegal contract provision, or one contrary to public policy, when invalidated, will be severed from the remainder of the contract if it is possible to do so without leaving the remainder of the contract meaningless." *Vineberg v. Brunswick Corp.*, 391 F.2d 184, 186 (5th Cir.1968). The provisions of the contract held to be contrary to federal regulations certainly could be severed from the contract before us without rendering it meaningless, especially in light of the fact that the contract before us contained a severability clause providing:

> If any part of this contract is invalid, unenforceable or inconsistent with the applicable laws or regulations of the State of Seller's address herein, such part shall be deemed amended, modified or deleted to conform thereto.

The Quillers contend that *Harrison v. Goodyear Service Stores*, 137 Ga.App. 223, 223 S.E.2d 261 (1976), and *General Finance Corp. v. Sprouse*, 577 F.2d 989 (5th Cir.1978), support application of the forfeiture provisions of O.C.G.A. § 10-1-38 in this case. In those cases, however, there was no dispute that the parties intended to enter contracts governed by Georgia law. *See Harrison*, 223 S.E.2d at 263 (contract governed by Georgia Retail Installment and Home Solicitation Sales Act); *Sprouse*, 577 F.2d at 991 (parties agreed contract was governed by Georgia Industrial Loan Act). Both decisions penalized creditors for charging or contracting to charge interest rates in excess of the statutory maximum under Georgia law. In contrast, in the case before us, the creditor contracted for a finance charge that was clearly permissible under federal law if the terms and conditions of the loan contract complied with federal law. In the event the district court finds that the parties intended to enter a legal contract under federal law, *Harrison* and *Sprouse* present no obstacle to a severance and injunctive remedy that would conform the terms and conditions of the contract to federal law rather than forfeiture of the finance

charge. Thus, even if the terms and conditions of the loan contract were contrary to federal law, the proper remedy would be to enjoin enforcement of those provisions absent any evidence that the creditor intended to enforce the illegal terms.

JAMES C. HILL, Circuit Judge, dissenting, with whom, FAY and R. LANIER ANDERSON, III, Circuit Judges, join:

I wholeheartedly concur with Judge Roney in his dissent, and write here only to express my fears that the court's treatment of this preemption loan agreement forecasts an excursion into hypertechnical "gamesmanship" similar to that apparent in litigation under the Truth-in-Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*

The usury preemption act was passed in 1980 during a time of historically high interest rates, when consumers who wished to purchase premanufactured homes were unable to obtain financing because financial institutions were unwilling to lend money for their purchase at the relatively low statutory interest levels prevailing in many states. In passing the preemption act, Congress constructively undertook to ease the severity of the mortgage credit crunch and insure the availability of mortgage credit in these states. S.Rep. No. 96-368, 96th Cong., 2d Sess. 18-19 (1979), *reprinted in* 1980 U.S.Code Cong. and Ad.News 236, 254-55. Although Congress concluded that purchasers of financing for premanufactured homes were entitled to additional consumer protections in order for their mortgages to fall within the preemption act, there is no doubt that the overriding objective of the act was to assist both borrowers and lenders by freeing up additional credit for housing. This was not intended to be a consumer protection disclosure act.

The majority opinion does not further the constructive purpose of the preemption act. The court holds that a lender loses the protection of the preemption act and is subject to the forfeiture provisions of state usury laws on

the basis of a contractual provision which is, at the most, merely ambiguous; even though both parties intended to enter into a federal preemption contract governed by federal law. This encourages a TILA-like game of "gotcha," where a borrower who wishes to serve as a class representative subjects the contracts to microscopic examinations to determine if it might be possible to claim damages for perceived disclosure violations in a situation where no "unwary" consumer has been misled. *See Shroder v. Suburban Coastal Corp.*, 729 F.2d 1371, 1385-86 (11th Cir.1984) (TILA violation) (Hill, J., dissenting).

The approach taken in the dissent authored by Judge Roney would further the purpose underlying the preemption legislation, while at the same time protecting the borrower from any violation of the federal act. A borrower can be adequately protected from actual violations of the act when and if they occur, at which time a counter-claim along the lines of the present action might be entertained. However, the sort of search for errors in draftsmanship upon which claims of violations might be predicated, encouraged by the court in this case, constitutes the court's enmity to the preemption act and a judicial attempt to defeat its purposes. Such "gamesmanship," permitted by the courts, has made what I perceive to be a mockery of the truth-in-lending laws. I hope that we do not travel down that road again in connection with this very useful law.

APPENDIX B

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

NO. 83-8455

Arthur QUILLER,
and all other persons
similarly situated,

Plaintiffs-Appellants,

v.

BARCLAYSAMERICAN/
CREDIT, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

Decided: March 19, 1984

Before GODBOLD, Chief Judge, RONEY and KRAVITCH, Circuit Judges.

KRAVITCH, Circuit Judge:

To finance their purchase of a new mobile home, plaintiff-appellants entered into a retail installment sales contract, which the mobile home dealer then assigned to the defendant-appellee credit corporation, BarclaysAmerican/Credit, Inc. The Quillers' agreement obligated them to pay finance charges exceeding a thirteen percent add-on rate, in apparent violation of the Georgia Motor Vehicles Sales Finance Act, O.C.G.A. §§ 10-1-30 to -38 (Michie 1982), which limits the finance charge on sales of new mobile homes to a ten percent add-on. Alleging a violation of the Georgia Code, plaintiffs filed a class action against Barclays in the Superior Court of Richmond County, Georgia, seeking class certification, a declaratory judgment barring the defendant from collecting any finance charges from the named plain-

tiffs and all other persons similarly situated, and damages in an amount double the time-price differential for wilful violation of the Georgia act. Barclays then removed the case to the United States District Court for the Southern District of Georgia.

The applicability of state usury laws, however, has been greatly curtailed by federal legislation. Financing agreements that satisfy the requirements of the Depository Institutions Deregulation and Monetary Control Act, Pub.L. No. 96-221, Title V, § 501, 94 Stat. 161 (1980) (codified at 12 U.S.C. § 1735f-7 note) (the "Act"), preempt state law interest ceilings, thereby enabling creditors to charge a rate of interest in excess of state law limits. The Quillers' complaint alleged that its contract was not insulated from the ceiling imposed by the Georgia statute because the agreement did not comply with the prerequisites for preemption under federal law. Specifically, they charged that their contract did not contain a provision requiring the lender to notify the debtor thirty days prior to instituting any action leading to repossession or foreclosure, thus violating the Act and one of the regulations promulgated thereunder, 12 C.F.R. § 590.4(h) (1983). Attached to the complaint was a copy of the installment sales contract.

Barclays moved to dismiss for failure to state a claim, contending that the cause of action was barred as a matter of law by the Act and the statute of limitations. Pretermitting the statute of limitations question, the district court dismissed the action as precluded by the federal statute. We disagree and reverse the order dismissing the Quillers' claim.

Our threshold inquiry is whether the district court's dismissal was procedurally premature. The Quillers' contract states a claim for relief under Georgia law—the charging of a usurious interest rate, which, if proved, would entitle them to relief for violation of the Georgia Motor Vehicle Sales Finance Act. Barclays' Rule 12(b)(6) motion alleges the affirmative defense of federal preemption of the Georgia

statute. Generally, the existence of an affirmative defense will not support a motion to dismiss. Nevertheless, a complaint may be dismissed under Rule 12(b)(6) when its own allegations indicate the existence of an affirmative defense, so long as the defense clearly appears on the face of the complaint. *See, e.g., Concordia v. Bendekovic*, 693 F.2d 1073 (11th Cir. 1982) (party may raise affirmative defense of res judicata by 12(b)(6) motion when defense's existence may be judged on face of complaint); *Mann v. Adams Realty Co.*, 556 F.2d 288, 293 n. 6 (5th Cir. 1977) (defense of statute of limitations may appear on face of complaint). *See generally* 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357 (1969). The claim may be adequately stated, as it is here, but in addition to the claim the complaint may include matters of avoidance that preclude the pleader's ability to recover. When this occurs, the complaint has a built-in defense and is essentially self-defeating. "[T]he problem is not that plaintiff merely has anticipated and tried to negate a defense he believes his opponent will attempt to use against him; rather plaintiff's own allegations show that the defense exists." *Id.* Although the Quillers' complaint would not be vulnerable to dismissal simply because they anticipated and attempted to negate the defense of federal preemption, if the complaint itself demonstrates that the Act governs the contract, a Rule 12(b)(6) dismissal would be proper.

Because the Quillers attached the installment sales contract to their pleadings, the district court properly examined the document to determine whether the defense of federal preemption was apparent on the face of the complaint. If the contract and complaint demonstrate that Georgia law does not apply because the agreement is governed by the Act, the action should be dismissed because it would appear beyond doubt that the Quillers could prove no set of facts in support of their claim. The district court therefore was procedurally correct in looking at the contract to determine whether it complied with the requirements of the federal statute.

Turning to the substance of the motion to dismiss, we first observe that the Act preempts state law limits on finance charges for sales of residential manufactured homes only if the financing arrangement complies with certain consumer protection regulations. Section 501(c) of the Act provides that the statute

> *shall not apply* to a loan, mortgage, credit sale, or advance which is secured by a first lien on a residential manufactured home *unless the terms and conditions relating to such loan,* mortgage, credit sale, or advance *comply with consumer protection provisions* specified in regulations prescribed by the Federal Home Loan Bank Board. *Such regulations shall—*
>
> . . . .
>
> (2) *require a 30-day notice* prior to instituting any action leading to repossession or foreclosure . . . .
>
> . . . .
>
> and (4) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

Pub.L. No. 96-221, Title V, § 501(c) (emphasis added).

The regulation implementing subsection (c)(2) states:

> *[N]o action to repossess or foreclose, or to accelerate payment* of the entire outstanding balance of the obligation, *may be taken* against the debtor *until 30 days after the creditor sends the debtor a notice of default*
>
> . . . .

12 C.F.R. § 590.4(h) (1983) (emphasis added). The Quillers alleged in their complaint and maintain on appeal that the statute and regulation require the financing agreement to include a provision guaranteeing the debtor thirty days notice before repossession or foreclosure. Since their agreement contains no such clause, they contend that the con-

tract is not protected under the preemption statute and thus is governed by Georgia law.[1]

We reject the Quillers' interpretation of the statute and regulation. Neither requires that a thirty-day notice provision appear in the contract. The plain language of the regulation prohibits only the *act* of foreclosure or repossession without giving notice. The words "no action . . . may be taken" regulate the conduct of creditors attempting to exercise their rights upon default, not the written financing agreements themselves. When subsection 590.4(h) is read in conjunction with other regulations implementing the Act, it becomes clear that the Federal Home Loan Bank Board (the "Board") did not intend to require that the debtor's right to thirty days notice be recited in the contract. Subsections 590.4(d) (prepayment without penalty),[2] (e) (terms of balloon payments),[3] (f) (late charges),[4] and (g) (agreement for deferral of fees)[5] all contain express, unambiguous

---

[1] On appeal the Quillers have argued additional reasons why their contract fails to qualify for protection under the Act. Since we decide *infra* that Barclays is not entitled to the benefits of federal preemption because the contract contravened the federal notice requirements, we need not decide the validity of the Quillers' other arguments.

[2] 12 C.F.R. § 590.4(d) provides: "*Prepayment penalties.* . . . The right to prepay shall be disclosed in the loan contract in type larger than that used for the body of the document."

[3] 12 C.F.R. § 590.4(e) provides: "*Balloon Payments.* (1) No creditor may enter into an agreement with a debtor which requires or anticipates a schedule of payments under which any one payment is more than twice the amount of an otherwise regularly scheduled payment. . . . (3) The parties may agree in writing to payments that are not substantially equal or that are paid at unequal intervals. . . ."

[4] 12 C.F.R. § 590.4(f) provides: "*Late Charges.* (1) No late charge may be assessed, imposed, or collected unless provided by written contract between the creditor and debtor. . . ."

[5] 12 C.F.R. § 590.4(g) provides: "*Deferral Fees.* (1) With respect to mobile home transactions containing precomputed finance charges, agreements providing for deferral of all or part of one or more installments shall be in writing, signed by the parties, and (i) Provide . . . ."

statements requiring specific rights of the debtor to be delineated in the written agreement. Subsection (h) contains no similar requirement. If an express contractual notice provision had been intended, the Board would have so provided in unambiguous terms.

Nor does the statute itself require a contractual notice provision. It states only that a loan does not qualify for federal protection unless the terms and conditions relating to such a loan comply with the consumer protection regulations of the Board. Rather than regulating the specific terms of financing agreements, the statute delegates this authority to the Board. Although subsection (c)(2) does direct the Board to promulgate a thirty-day notice regulation, the statute does not demand that the regulation require the notice provision to appear in the contract. The Act merely requires the agreement to comply with the regulations, which do not themselves require an express notice provision.

Our construction of regulation 590.4(h) and the statute is consistent with the Board's own interpretation. An opinion letter of the Board's general counsel concludes, "This requirement [§ 590.4(h)] refers only to the act of giving notice; neither paragraph (h) nor the Congressional legislation that it implements . . . expressly requires that a covered credit agreement recite the purchaser-borrower's right to notice." 5 Fed.Banking L.Rep. ¶83,027 (1983). In an amicus brief filed by the Board in this case, the agency has embraced the conclusion of its general counsel. Since the agency's view of its own regulation and the statute it oversees is not "demonstrably irrational," we should give great weight to its interpretation. *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 100 S.Ct. 790, 797, 63 L.Ed.2d 22 (1980); *see also Sage v. Freedom Mortgage Co.*, 704 F.2d 1519, 1521 (11th Cir.1983) (en banc). We therefore hold that to qualify for federal preemption under the Act the financing agreement need not contain an express term guar-

anteeing the debtor thirty days notice before repossession or foreclosure.

Although federal law does not mandate a contractual notice provision, the creditor cannot obtain the benefits of preemption if the financing agreement contains express provisions authorizing conduct *contrary* to the statute or regulations. While there is no affirmative duty to disclose to the debtor his statutory right to notice before repossession or foreclosure, if the contract permits the creditor to repossess or foreclose immediately upon default, the "terms and conditions" relating to the loan agreement do not comply with regulation § 590.4(h) and the creditor cannot claim the benefits of federal preemption.

In determining whether the terms and conditions of this agreement comply with the Board's consumer protection regulations, we should keep in mind that Congress included manufactured home financing in its preemption scheme only on the condition that consumer-debtors would be guaranteed certain safeguards. *See* H.Conf.Rep. No. 96-842, 96th Cong., 2d Sess. 79, *reprinted in* 1980 U.S.Code Cong. & Ad.News 298, 309. Because purchasers of mobile homes frequently are unaware of complicated rules of contract construction, we should examine the contract through the eyes of the typical consumer and determine whether the lender could use the terms of the contract to impose illegal burdens on a debtor with no knowledge of his statutory rights. It would be unrealistic to assume that every illegal act will be corrected through litigation. *See General Finance Corp. of Georgia v. Sprouse*, 577 F.2d 989 (5th Cir. 1978) (when interpreting contracts in light of consumer legislation, court should consider actual operation of contract in commercial world, effect upon consumer not familiar with legal rights, and risk that contract might allow lender to employ ambiguous provisions to his advantage). The rule of construction that ambiguities and inconsistencies should be resolved against the drafter, *Landale Enterprises, Inc. v.*

Berry, 676 F.2d 506 (11th Cir.1982), is particularly appropriate in the areas protected by consumer legislation.

The Quiller contract provides in part:

> If Customer defaults on any obligation under this contract, or if Holder shall consider the indebtedness or the Collateral insecure, *the full balance may, upon election of Holder, without notice, subject to any notice of right to cure, become due and payable*, less the required rebate of the Finance Charge . . . . Customer agrees in any such case to pay said amount or, at Holder's election, to deliver the Collateral to Holder, and Holder may, *without notice or demand for performance or legal process*, peaceably enter any premises, but not into any dwelling, where the Collateral may be found, peaceably take possession of it and custody of anything found in it.

The agreement includes language that, on its face, is contrary to the requirements of the statute and regulations. It permits the creditor (1) to foreclose on the loan "without notice;" (2) to repossess "without notice or demand for performance or legal process;" and (3) to demand payment of the full balance upon the debtor's default or the creditor's insecurity "without notice." These provisions are inaccurate statements of the creditor's rights under federal law. The only language that might apprise the debtor of his statutory right to notice is the vague qualification that the creditor's express, contractual powers to immediately foreclose, repossess and accelerate are "subject to any notice of right to cure." Unless the debtor has acquired knowledge of his statutory right to cure from some outside source, however, this language will not accurately notify him of his contractual rights. The qualification would, at most, inform the debtor that he *may* have a right to cure, but the law guarantees him an *absolute* right to cure. This inconsistent language goes further than simply remaining silent on the debtor's right to notice upon default; by declaring the creditor's unauthorized power to foreclose immediately, the con-

sumer is given an affirmative misrepresentation as to his statutory guarantees.

Barclays contends that its contract does comply with the regulations because § 590.4(h) cannot be violated until the creditor actually forecloses, repossesses or accelerates payment without giving thirty days notice. The argument misconstrues the language of the Act and the policies behind it. The statute and regulations allow a creditor to draft a contract that does not expressly grant the debtor a right to thirty days notice. But when the contract affirmatively allows the creditor to foreclose, repossess or accelerate payment immediately upon default, subject to an undefined, potential right to cure, the "terms and conditions" relating to the loan agreement do not comply with the regulations or the statute. By authorizing immediate action upon default, Barclays has introduced a contract term that violates the Act. It may not claim the benefits of the federal law while at the same time failing to provide the consumer protections that are the price for those benefits. We therefore hold that the Quiller contract does not qualify for protection under the preemption statute. The district court's grant of defendant's motion to dismiss on this ground is REVERSED, and we REMAND for further proceedings.

RONEY, Circuit Judge, dissenting:

I respectfully dissent from the Court's holding that the Quiller contract does not qualify for protection under the Federal Preemption Statute. I agree with the court that the thirty-day notice provision is not required to be in the contract. I cannot agree that the remedy applied here is suitable because of the language in the contract concerning the notice requirement.

When the contract is obviously drawn and intended by all parties to permit them to take advantage of the Federal Preemption Statute, it is unduly harsh to throw the whole contract out just because it contains language which appears to violate the thirty-day notice requirement. Rather

than applying state usury laws to a contract which could not have been validly made thereunder, it would be more equitable to simply invalidate this contract clause to the extent it violates the consumer regulations, and enjoin enforcement if that remedy is deemed necessary to protect the consumer.

This result would further the twin arms fo the Federal Preemption Act: assuring the availability of consumer credit for the purchase of manufactured housing and according protection to consumer borrowers, without impacting so unnecessarily into a carefully conceived financing program established to meet the needs of both parties in a time of rising cost of money.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CV 183-87

ARTHUR QUILLER, LILLIE
MAE QUILLER and All Other
Persons Similarly Situated,

Plaintiffs

vs.

BARCLAYSAMERICAN/CREDIT,
INC.,

Defendant.

ORDER

Presently before the Court is the defendant's motion to dismiss. In support of its motions, the defendant asserts that the plaintiffs' claims are barred as a matter of law by federal preemption and the statute of limitations.

Pretermitting the defendant's statute of limitations argument, I conclude, in light of the arguments heard in this matter on June 10, 1983, that the defendant's motion is well-founded. Accordingly, it is hereby GRANTED.

ORDER ENTERED at Augusta, Georgia, this 14th day of June, 1983.

/s/ Dudley H. Bowen, Jr.

UNITED STATES DISTRICT
JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

NO. 83-8456

Jack GRANT, Jr.,
Evelyn H. Grant,
and all other persons
similarly situated,

Plaintiffs-Appellants,

v.

GENERAL ELECTRIC
CREDIT CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

Decided: July 8, 1985

Before GODBOLD, Chief Judge, RONEY, TJOFLAT, HILL, FAY, VANCE, KRAVITCH, JOHNSON, HENDERSON, HATCHETT, ANDERSON and CLARK* , Circuit Judges.

PER CURIAM:

This is the second of two cases taken *en banc* to determine whether the mobile home financing contracts involved satisfy certain conditions imposed by federal law that would entitle the contracts to be exempt from state law interest ceilings. By meeting the requirements of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub.L. No. 96-221, Title V, § 501, 94 Stat. 161 (1980)

* Circuit Judge Thomas A. Clark, recused himself and did not participate in this decision.

(codified at 12 U.S.C.A. § 1735f-7 note) (the "Act") and the regulations promulgated thereunder by the Federal Loan Bank Board (FHLBB), *see* 12 C.F.R. § 590.4, certain financing agreements preempt state law interest ceilings, thereby enabling creditors to charge a rate of interest in excess of state law limits.

In the other case, a panel of this Court had held that, although a contract need not contain express terms tracking the provisions of the statute or regulations to qualify for preemption, "a creditor cannot obtain the benefits of preemption if the financing agreement contains express provisions authorizing conduct *contrary* to the statute or regulations." *Quiller v. BarclaysAmerican/Credit, Inc.*, 727 F.2d 1067 (11th Cir.1984). That panel opinion has now been reinstated by the *en banc* court. *Quiller v. BarclaysAmerican/Credit, Inc.*, slip op. ___, ___, ___ F.2d ___, ___ (11th Cir. 1985) (en banc) [No. 83-8455, slip op., July 1, 1985]. In this case the Court now decides that the different contract provisions before us are not clearly contrary to the requirements of the statute and regulations, so the creditors are entitled to the benefits of federal preemption. The district court's dismissal of this action is affirmed.

The Grants' Claim

In February 1982, plaintiffs Jack and Evelyn Grant purchased a mobile home from Hutchinson Homes, Inc. The parties entered into a retail sales installment agreement on a form contract prepared by defendant General Electric Credit Corporation (GECC), to which Hutchinson Homes assigned the contract shortly after the Grants took possession of the mobile home. The interest rate on the contract exceeded an add-on rate of 13.6%, 3.6% higher than the 10% maximum finance charge then allowed under the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. §§ 10-1-30 to -38 (Michie 1982).

In March 1983, the Grants instituted a class action against GECC in federal district court alleging a violation

of anticipating that GECC would raise the defense that the interest rate was valid under section 501 of the federal Act, the Grants alleged that the GECC contract lacked the consumer protections required by the Act as a condition to exempting the finance charge from the state usury law interest ceilings. The district court dismissed the action as preempted by federal law.

The Grants contend the GECC contract failed to comply with the FHLBB regulations in five particulars. Four of these instances involve the following language contained in one sentence of the GECC contract:

> In the event of Buyer's default in payment when due, Seller may declare immediately due and payable any and all installments due or to become due hereunder, less the unearned portion of that part of the *FINANCE CHARGE* designated as Time Price Differential calculated by the Pro-Rata Method provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right.

Following the holding in *Quiller*, we examine separately, in the order in which they were presented, arguments that the GECC contract is directly contrary to the federal statute and regulations.

Right to Notice Prior to Acceleration

The Grants contend that the phrase "Seller may declare immediately due and payable any and all installments due or to become due hereumder . . ." is a "term or condition" of the contract that fails to comply with 12 C.F.R. § 590.4(h), which states that "no action . . . to accelerate payment of the entire outstanding balance of the obligation . . . may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default." The contract language, the Grants argue, reserves for GECC the right to declare the entire contract "immediately due and payable," contrary to the 30-day notice required by the regulations. The GECC contract contains, however, the qualifying

clause "provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right."

As held in *Quiller*, the federal preemption statute does not require a disclosure in the contract of the notice rights given by the Act and regulations, nor does it eliminate the creditor's right to accelerate upon default. A creditor is required to send the debtor a notice of default providing a 30-day grace period during which the debtor may correct the default and continue with the contract as though the default had not occurred. 12 C.F.R. § 590.4(h). The GECC contract's qualifying clause, which is cast in mandatory terms, unambiguously informs the debtor that he or she "shall be given notice of right to cure default" before "seller is permitted" to exercise its right to accelerate. Although the contract does not reveal that the debtor has 30 days in which to cure the default, there is no contention that notices sent to the Grants failed to notify them of the 30-day grace period. That grace period is prominently revealed in the sample notice of default and right to cure contained in the regulations. *See* 12 C.F.R. § 590.4(h)(2).

This "term or condition" of the contract is not contrary to the statute and regulations governing federal preemption.

Acceleration of the Entire Balance

The Grants also contend that the acceleration provision of the contract is contrary to the following portion of the FHLBB regulations:

> In the case of default in payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as described above. The debtor is not entitled to notice of default more than twice in any one-year period.

12 C.F.R. § 590.4(h). The Grants argue that the contract provision allowing GECC to accelerate "all installments due or to become due hereunder, less the unearned portion of the finance charge" is contrary to the regulations.

The quoted portion of the regulations, however, refers to the content of the notice of default, not to the provisions of the contract. There is no allegation that GECC sent the Grants a notice of default with language contrary to that of 12 C.F.R. § 590.4.

Provisions Concerning Right to Cure Default

The Grants argue that because 12 C.F.R. § 590.4(h) requires that a debtor be given the right to cure any default for 30 days, and because notice of that fact must be communicated to the debtor, the GECC contract's reference to an undefined "notice of right to cure" is inadequate. Again, however, the Grants take the regulation's requirements for the notice of default and attempt to apply them to the terms of the contract itself. The regulation does *not* provide that "no contact qualifies for preemption" unless it discloses the 30-day notice, but rather that "no action . . . to accelerate . . . may be taken" without the notice. 12 C.F.R. § 590.4(h); *see Quiller*, 727 F.2d at 1070. Thus, the notice section of the regulations is in direct contrast with other sections of the regulations which expressly require disclosure of certain information within the loan contract. *See* 12 C.F.R. § 590.4(d) ("The right to prepay shall be disclosed in the loan contract. . . ."); *id.* § 590.4(f) ("No late charge may be assessed, imposed, or collected unless provided for by written contract between the creditor and debtor."). As the *Quiller* court held, 12 C.F.R. § 590.4(h) does not require creditors to recite in the loan contract the specific rights of a defaulting debtor. 727 F.2d at 1070.

Right to Notice Prior to Repossession or Foreclosure

The Grants contend that the Act itself requires that preemption contracts disclose a defaulting debtor's right to 30 days notice prior to repossession or foreclosure. The GECC contract is silent with regard to foreclosure and repossession. Thus, in the absence of express contractual terms authorizing conduct contrary to federal law, this argument is foreclosed by our holding in *Quiller* that "to qualify for federal preemption under the Act the financing agreement need not contain an express term guaranteeing the debtor thirty days notice before repossession or foreclosure." 727 F.2d at 1071.

Although the Grants have not claimed that the GECC contract contains terms or conditions contrary to the right to a 30-day notice prior to repossession or foreclosure, they contend that absence of any reference to that right permits the creditor to repossess without notice by operation of Georgia law. In Georgia, a creditor may repossess by self help without notice unless the contract contains a specific provision to the contrary. O.C.G.A. § 11-9-503; *see also Ford Motor Credit Co. v. Hunt*, 241 Ga. 342, 245 S.E.2d 295 (1978). A creditor may also foreclose upon 7-days notice pursuant to a judicial writ of possession. O.C.G.A. § 44-14-231, -232(b). The Grants' argument fails for the simple reason that the issue before us is not what Georgia law requires, but what the federal preemption scheme requires, as there appears to be no question of fact as to whether the parties intended to enter a federal preemption contract.

We recognize that in individual cases the lack of specific contract language might allow an unscrupulous creditor to foreclose or repossess without notice by preying on consumers unaware of their notice rights under federal law or by litigating before state court judges who might interpret the agreement under Georgia law due to unfamiliarity with the complexities of the federal preemption scheme. But there is no allegation that GECC conducted its business in such a

manner. Such an argument would convert the law into a disclosure act. Arguments for such a change must be addressed to the FHLBB or congress, not to this Court.

Right of Prepayment Without Penalty

As a final challenge to the contract itself, the Grants focus on the requirement of 12 C.F.R. § 590.

> A debtor may prepay in full or in part the unpaid balance of the loan at any time without penalty. The right to prepay shall be disclosed in the loan contract in type larger than that used for the body of the document.

The Grants argue the type size of the print was not larger than that used in the body of the contract. A review of the contract reveals that the prepayment clause is set in type clearly larger than that of the text surrounding it which comprises the "body" of the contract. Although certain headings and clauses in other parts of the contract are set in larger or bolder type, the type size used here is larger than "the body of the document" and fulfills the regulation's purpose to call attention to the provision. *See* 45 Fed. Reg. 43684 (June 30, 1980). The regulation does not require the disclosure in the largest type used in the instrument.

Significantly, the version of 12 C.F.R. § 590.4(d) originally proposed by the FHLBB required that the prepayment clause be "conspicuously disclosed in the loan contract." 45 Fed. Reg. 31124 (May 5, 1980). The FHLBB replaced that phrase with the current type-size requirement because "the Board agree[d] that [the "conspicuous" requirement] may be potentially troublesome." 45 Fed. Reg. 43684. (June 30, 1980). This litigation demonstrates that the alteration in the regulations failed to eliminate "troublesome" disputes.

Defendant's Failure to Show Loan's Entitlement to Federal Preemption

As an alternative ground for reversal, the Grants urge that GECC made no showing that the financing transaction was a "federally related mortgage loan" eligible for preemption under the Act. Throughout the proceedings in the district court, however, the Grants never suggested that given an appropriate contract this financing transaction would fail to qualify for preemption. For instance, in their complaint plaintiffs admitted that "[f]ederal law would have allowed additional interest to be charged had the lender complied with certain prerequisites specified in the federal statute," and then proceeded to enumerate the alleged contractual shortcomings. The closest the Grants came to raising the "federally related mortgage loan" argument in the district court was in their opposition to GECC's motion to dismiss, which remarked:

> Defendant has made no showing in that regard but assuming, for the sake of argument, that the transaction would meet the definition of a "federally-related mortgage loan," the next question is whether the terms and conditions of the credit sales contract allow it to be preempted from the state law that would normally govern.

Aside from this isolated statement, which hardly amounts to much more than conceding the issue, the Grants never mentioned, much less argued, to the district court that their financing transaction could not come under the Act. The thrust of the complaint and other papers filed there reflect only the central argument that the "terms and conditions" of the GECC contract failed to satisfy the requirements of the Act and regulations. Having failed to raise the issue before the district court, the Grants cannot raise the issue for the first time on appeal. *See Case v. State Farm Mutual Automobile Insurance Co.*, 294 F.2d 676, 678 (5th Cir. 1961).

Conclusion

The provisions of the GECC contract before us differ significantly from those in the contract found to be contrary to the federal statute and regulations in *Quiller*. We held that the language in the *Quiller* contract inaccurately stated the creditor's rights under the federal preemption scheme by permitting the creditor (1) to foreclose on the loan "without notice;" (2) to repossess "without notice or demand for performance or legal process;" and (3) to demand payment of the full balance upon the debtor's default or the creditor's insecurity "without notice." 727 F.2d at 1072. The contract's qualification that these express contractual powers of the creditor were "subject to any notice of right to cure" was held to be vague and equivocal, and in any event, inconsistent with the three specific reservations of creditor's rights to be exercised "without notice." In contrast, GECC's contract makes no mention of the creditor's right to foreclose or repossess upon the debtor's default, nor does it purport to assume such powers in the event of the creditor's general "insecurity." The only specific reservation that GECC did make concerns the right to accelerate upon default. This right is expressly conditioned in clear, mandatory terms upon the debtor's receipt of notice of right to cure a default prior to acceleration. In sum, the affirmative misrepresentations of the debtor's federal statutory guarantees that existed in the agreement in *Quiller* are not present in the GECC contract.

Having held that the "terms and conditions" of the GECC contract satisfied the prerequisites for obtaining the protection of the Federal preemption scheme, we need not address defendant's argument that the Grants' state law claim is foreclosed by Georgia's one-year statute of limitations for usury actions. The order of the district court dismissing the Grants' complaint is therefore

AFFIRMED.

KRAVITCH, Circuit Judge, dissenting, with whom, GODBOLD, Chief Judge, and VANCE, Circuit Judge, join:

I respectfully dissent. In *Quiller v. BarclaysAmerican/Credit, Inc.*, slip op. ___, ___ F.2d ___ (11th Cir. 1985) (en banc), this court reinstated the panel's opinion, which held that a contract containing terms contrary to the requirements of the Depository Institutions Deregulation and Monetary Control Act, 12 U.S.C. § 1735f-7 (note), and regulations promulgated thereunder, is not entitled to the protection of federal preemption of state interest rate ceilings. In this case, the majority perceives sufficient distinctions between the language of the *Quiller* contract and the one under scrutiny here to warrant assertion of the preemption defense. Although I agree that General Electric Credit Corporation's (GECC) contract does not suffer from the same defects as the *Quiller* contract, I disagree with the majority's conclusion that GECC's contract is entitled to protection under the federal preemption scheme.

In *Quiller*, we began our analysis of the contract by admonishing that "we should examine the contract through the eyes of the typical consumer and determine whether the lender could use the terms of the contract to impose illegal burdens on a debtor with no knowledge of his statutory rights." Slip op. ___, ___ F.2d at ___. This rule of interpretation is consistent with Congress's decision to include manufactured home financing in the preemption scheme only on the condition that consumer-debtors would enjoy certain protections under finance agreements. Further, we determined that it would be unrealistic to assume that all inaccurate statements of rights and actions taken pursuant thereto would be remedied through litigation. Although we concluded that to qualify for preemption a financing agreement need not contain an express term guaranteeing the debtor thirty days notice prior to repossession or foreclosure, we held that contracts that affirmatively allowed a creditor to take action inconsistent with the debtor's right

to notice and right to cure were not federal preemption agreements. *Id.* slip op. at ___, at ___.

GECC's credit agreement provides in part:

> In the event of Buyers' default in payment when due, Seller may declare *immediately* due and payable any and all installments due or to become due hereunder, less the unearned portion of that part of the FINANCE CHARGE designated as Time Price Deferential calculated by the Pro-Rata Method *provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right.* . . .

(emphasis in italics added). Because the contract grants the creditor the right, upon default, to accelerate immediately payment of any or all installments, it is contrary to 12 C.F.R. § 590.4(h), which prohibits initiation of any action to accelerate payments until 30 days after the creditor sends the debtor a notice of default and right to cure. Further, section 590.4(h) provides that the "sum stated in the notice of default may only include payments in default and applicable late or deferral charges. . . ." A provision allowing *all* future payments to become due *immediately* upon default is thus an inaccurate statement of the creditor's rights, in that under section 590.4(h), the debtor has the right to cure the default, by paying the amount in default plus any late charges, *before* the creditor may accelerate payments.

The majority relies on the qualifying clause ("provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right") to conclude that the contract unambiguously informs the debtor of the right to cure the default before the creditor may accelerate payments. Although this provision is not as vague or equivocal as the qualifying clause in the *Quiller* contract, slip op. at ___, ___ F.2d at ___, in my view it fails to remedy the inaccurate statement of rights already conveyed by the agreement. Read as a whole, the challenged passage could be fairly construed by a consumer-debtor to transmit conflicting messages: the creditor's right to declare immediately

upon default that all installments are due, and the debtor's right to cure before the creditor exercises that right. Moreover, there is no explanation that the right to cure means paying only the amount in default plus any late charge. As the majority observes, there is no requirement that this be explained in the contract; yet, given the creditor's right under the contract to accelerate immediately upon default, the unexplained right to cure fails to offer a statement sufficient to qualify the agreement as a preemption contract.[1] As in the *Quiller* contract, a debtor who reads this provision may receive an accurate impression of his or her rights upon default, if he or she had independent knowledge of the applicable statute and regulations. Absent this, however, a debtor could easily conclude that the creditor can accelerate immediately upon default, subject to some un-

---

[1] In an effort to reconcile the GECC contract with section 590.4(h), the majority explains that the portion of the regulation setting forth the amount due upon default refers only to the notice of default, not to provisions that must be contained in a preemption contract. Slip op. at ___, ___ F.2d at ___. I believe the majority overlooks the fact that the agreement grants the creditor the right to accelerate payments immediately upon default. The regulation provides that the sum stated in the notice of default may not exceed the amount in default plus an applicable late charge; thus, a creditor is forbidden to accelerate payments immediately upon default of one payment. The debtor must have the opportunity to cure by paying the amount stated in the notice of default.

Twice the majority observes that there is no allegation that GECC sent the Grants a notice of default that contradicted the form set forth in the regulations. Slip op. at ___, ___, ___ F.2d at ___, ___. This ignores *Quiller's* focus on the language of the agreement. To await the creditor's actual performance upon default would allow a creditor who drafts a contract that contradicts every right granted to the consumer-debtor by the regulations to claim a preemption defense if there is no effort to enforce the unlawful provisions. We would not know, however, whether the creditor attempted to enforce the unlawful provision unless the debtor filed a lawsuit. As we observed in *Quiller*, "It would be unrealistic to assume that every illegal act will be corrected through litigation." Slip op. at ___, ___ F.2d at ___ (citing *General Finance Corp. of Georgia v. Sprouse*, 577 F.2d 989 (5th Cir. 1978)).

specified right to cure. At best, the language of the agreement is ambiguous.[2]

The focus of our *Quiller* decision was to prevent creditors from exercising leverage over unwary consumer-debtors faced with default. Congress sought to ensure that consumer-debtors would not immediately lose their homes upon the failure to tender a single payment on time, by guaranteeing the debtors' right to cure and right to notice before repossession, foreclosure or acceleration. I do not believe that GECC's credit agreement fulfills this purpose. Accordingly, I would hold that the GECC contract is not entitled to the benefits of federal preemption.

---

[2] Language, of course, can be inherently ambiguous, and some debtors may not understand their rights under an agreement no matter how clear the terms. Nonetheless, although the statute and regulations do not require that certain provisions be set forth explicitly in an agreement, the onus is on the creditor who wishes to claim the preemption defense to draft a document that does not contradict rights guaranteed by the regulations. When doing so, the creditor must employ language that makes the contract readily understandable by a reasonable consumer-debtor. *Quiller*, slip op. at ___, ___ F.2d at ___. *Cf. Jeter v. Credit Bureau*, 754 F.2d 907, 910-13 (11th Cir. 1985) (to determine whether Fair Debt Collection Practices Act has been violated, court is obligated to decide whether least sophisticated consumer would be deceived, misled, or harassed by creditor's actions).

APPENDIX E

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

NO. 83-8456

Jack GRANT, Jr., Evelyn H. Grant, and all other persons similarly situated,

Plaintiffs-Appellants,

v.

GENERAL ELECTRIC CREDIT CORPORATION.

Defendant-Appellee.

Before GODBOLD, Chief Judge, RONEY and KRAVITCH, Circuit Judges.

Decided: March 19, 1984

PER CURIAM:

Plaintiff-appellants purchased a mobile home from Hutchinson Homes, Inc. in February 1982. The parties entered into a retail installment sales contract on a form prepared by the defendant-appellee, General Electric Credit Corporation (GECC), which obtained the contract by assignment from Hutchinson shortly after the Grants took possession of the home. The rate of interest on the contract exceeded an add-on rate of 13.6%, 3.6% higher than the maximum finance charge on mobile home contracts allowed under the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. §§ 10-1-30 to -38 (Michie 1982).

The Grants filed a complaint in the District Court for the Southern District of Georgia on behalf of themselves and a class of all persons similarly situated, seeking damages and injunctive relief for the alleged violation of Georgia law. In

addition to setting forth the state law claim, the complaint attempted to refute an anticipated defense that the high interest rate was valid under § 501 of the Depository Institutions Deregulation and Monetary Control Act, Pub.L. No. 96-221, Title V, 94 Stat. 161 (1980)(codified at 12 U.S.C. § 1735f-7 note) (the "Act"), which preempts state usury laws governing mobile home financing if the lender complies with certain consumer protection regulations. Attached to the complaint was a copy of the financing agreement. After a hearing on a defendant's motion to dismiss for failure to state a claim, the district court dismissed the action, concluding that the Act governed the contract and that the finance charge was thus protected under federal law. We reverse.

The Grants alleged in their complaint and maintain on appeal that GECC did not comply with the conditions imposed by the Act and the implementing regulations, and that the contract is therefore governed by Georgia law. Specifically, they contend that the contract impermissibly allows GECC to immediately declare the entire contract due and payable upon the buyer's default without giving the debtor thirty days notice and right to cure as provided in the Act and 12 C.F.R. § 590.4(h)(1983). [1]

This case is controlled by our decision in *Quiller v. BarclaysAmerican/Credit, Inc.*, slip op. at 2248, ___ F.2d ___ (1983), where we held that although neither the Act nor the regulations requires the lender to include a thirty-day notice provision in the financing agreement, if the contract contains a term or condition inconsistent with the regula-

---

[1] In an amended complaint filed shortly before the district court rendered its decision and in their appeal to this court, the Grants have alleged additional reasons why their contract does not comply with federal law. Because we decide *infra* that the Grants are entitled to a reversal of the district court's dismissal based upon the contract's failure to accurately state the creditor's right to accelerate, we need not decide the validity of their other contentions.

tions, the creditor may not obtain the benefits of the federal statute.

Section 501(c) of the Act authorizes the preemption of state usury limits only if the "terms and conditions" of the loan agreement comply with the consumer protection regulations promulgated by the Federal Home Loan Bank Board. The regulation applicable to this contract provides:

> *[N]o action to repossess or foreclose, or to accelerate payment* of the entire outstanding balance of the obligation, *may be taken* against the debtor *until 30 days after the creditor sends the debtor a notice of default.* . . . In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges . . . .

12 C.F.R. § 590.4(h) (1983) (emphasis added).

The Grants' contract provides in part:

> In the event of Buyer's default in payment when due, Seller may declare *immediately* due and payable any and all installments due or to become due hereunder, less the unearned portion of that part of the FINANCE CHARGE designated as Time Price Deferential calculated by the Pro-Rata Method *provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right.* . . .

This passage is directly contrary to the statute and § 590.4(h) of the regulations because it grants the creditor the right, upon default, to immediately accelerate payment of any and all installments due or to become due under the contract. The regulation unequivocally forbids the creditor from immediately demanding all installments due and payable upon default; it can only do so thirty days after the creditor sends the debtor notice of default and right to cure. Moreover, the regulation provides that the sum stated in the notice may only include payments in default plus any applicable late charges. The creditor may not, as this contract allows, declare all installments due and payable as

soon as the debtor defaults on payments. A provision allowing all future payments to become due immediately upon default is an inaccurate statement of the creditor's rights in the federal scheme.

The qualifying clause here ("provided that Buyer shall be given notice of right to cure . . . .") may more accurately inform the debtor of his absolute right to notice than did the qualifying clause in *Quiller*,[2] but the clause does not remedy the inaccurate statement of the creditor's power already conveyed. The passage transmits two conflicting messages: the creditor's right to declare all installments immediately due and payable and the debtor's right to cure before the creditor exercises that right. As in the Quiller contract a debtor reading this provision might receive an accurate impression of his rights if he is aware of the federal statute, but absent this outside knowledge, the debtor can only conclude that the creditor may accelerate immediately upon default, subject to some unspecified right to cure.

Since the § 590.4(h) forbids immediate acceleration, the contract does not comply with the regulation. When a financing agreement includes a term that is inconsistent with one of the Act's implementing regulations, the applicability of state law to the contract is not preempted. We therefore reverse the district court's dismissal of the complaint. REVERSED and REMANDED.

RONEY, Circuit Judge, dissenting:

I respectfully dissent for the reasons stated in my dissent in *Quiller v. BarclaysAmerican/Credit, Inc.*, ___ F.2d ___, ___ (11th Cir. 1984) [No. 83-3455, slip op. at 2253, (11th Cir. March 19, 1984)].

---

[2] The contract in *Quiller* allowed the lender to foreclose, repossess or accelerate payment "without notice, subject to any notice of right to cure. . . ." slip op. at 2252, ___ F.2d at ___ (1983).

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CV 183-96

JACK GRANT, JR. and MRS. EVELYN H. GRANT,

Plaintiffs,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,

Defendant.

ORDER

Presently before the Court is defendant's motion to dismiss. In support of its motion, the defendant asserts that the plaintiffs' claims are barred as a matter of law by federal preemption and the statute of limitations.

Pretermitting that defendant's statute of limitations argument, I conclude in light of the arguments heard in this matter on June 10, 1983, that the defendant's motion is well-founded. Accordingly, it is hereby GRANTED.

ORDERED entered at Augusta, Georgia, this 14th day of June, 1983.

/s/ Dudley H. Bowen
Judge

United States District Court
Southern District of Georgia

APPENDIX G

Depository Institutions Deregulation And Monetary Control Act of 1980, Pub. L. No. 96-221, Title V § 501, 94 Stat. 164, (March 31, 1980), codified at 12 U.S.C. § 1735f-7 note.

Part A—Mortgage Usury Laws

SEC. 501.(a)(1) The provisions of the constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is—

(A) secured by a first lien on residential real property, by a first lien on stock in a residential cooperative housing corporation where the loan, mortgage, or advance is used to finance the acquisition of such stock, or by a first lien on a residential manufactured home;

(B) made after March 31, 1980; and

(C) described in section 527(b) of the National Housing Act (12 U.S.C. 1735f-5(b)), except that for the purpose of this section—

(i) the limitation described in section 527(b)(1) of such Act that the property must be designed principally for the occupancy of from one to four families shall not apply;

(ii) the requirement contained in section 527(b)(1) of such Act that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation or to a loan or credit sale secured by a first lien on a residential manufactured home;

(iii) the term "federally related mortgage loan" in section 527(b) of such Act shall include a credit sale which is secured by a first lien on a residential manufactured home and which otherwise meets the definitional requirements of section 527(b) of such Act, as those requirements are modified by this section;

(iv) the term "residential loans" in section 527(b)(2)(D) of such Act shall also include loans or credit sales secured by a first lien on a residential manufactured home;

(v) the requirement contained in section 527(b)(2)(D) of such Act that a creditor make or invest in loans aggregating more than $1,000,000 per year shall not apply to a creditor selling residential manufactured homes financed by loans or credit sales secured by first liens on residential manufactured homes if the creditor has an arrangement to sell such loans or credit sales in whole or in part, or if such loans or credit sales are sold in whole or in part to a lender, institution, or creditor described in section 527(b) of such Act or in this section or a creditor, as defined in section 103(f) of the Truth in Lending Act, as such section was in effect on the day preceding the date of enactment of this title, if such creditor makes or invests in residential real estate loans or loans or credit sales secured by first liens on residential manufactured homes aggregating more than $1,000,000 per year; and

(vi) the term "lender" in section 527(b)(2)(A) of such Act shall also be deemed to include any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act.

(2)(A) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest which may be charged, taken, received, or re-

served shall not apply to any deposit or account held by, or other obligation of a depository institution. For purposes of this paragraph, the term "depository institution" means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422); and

(vi) any insured institution as defined in section 408 of the National Housing Act (12 U.S.C.1730a).

(B) This paragraph shall not apply to any such deposit, account, or obligation which is payable only at an office of an insured bank, as defined in section 3 of the Federal Deposit Insurance Act, located in the Commonwealth of Puerto Rico.

(b)(1) Except as provided in paragraphs (2) and (3), the provisions of subsection (a)(1) shall apply to any loan, mortgage, credit sale, or advance made in any State on or after April 1, 1980.

(2) Except as provided in paragraph (3), the provisions of subsection (a)(1) shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states ex-

plicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State.

(3) In any case in which a State takes an action described in paragraph (2), the provisions of subsection (a)(1) shall continue to apply to—

(A) any loan, mortgage, credit sale, or advance which is made after the date such action was taken pursuant to a commitment therefor which was entered during the period beginning on April 1, 1980, and ending on the date on which such State takes such action; and

(B) any loan, mortage, or advance which is a rollover of a loan, mortgage, or advance, as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period beginning on April 1, 1980, and ending on the date on which such State takes any action described in paragraph (2).

(4) At any time after the date of enactment of this Act, any State may adopt a provision of law placing limitations on discount points or such other charges on any loan, mortgage, credit sale, or advance described in subsection (a)(1).

(c) The provisions of subsection (a)(1) shall not apply to a loan, mortgage, credit sale, or advance which is secured by a first lien on a residential manufactured home unless the terms and conditions relating to such loan, mortgage, credit sale, or advance comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. Such regulations shall—

(1) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges, and deferral fees;

(2) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

(3) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1; and

(4) include such other provisions as the Federal Home Loan Bank Board may prescribe after a finding that additional protections are required.

(d) The provisions of subsection (c) shall not apply to a loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home until regulations required to be issued pursuant to paragraphs (1), (2), and (3) of subsection (c) take effect, except that the provisions of subsection (c) shall apply in the case of such a loan, mortgage, credit sale, or advance made prior to the date on which such regulations take effect if the loan, mortgage, credit sale, or advance includes a precomputed finance charge and does not provide that, upon prepayment in full, the refund of the unearned portion of the precomputed finance charge is in an amount not less the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1. The Federal Home Loan Bank Board shall issue regulations pursuant to the provisions of paragraphs (1), (2), and (3) of subsection (c) that shall take effect prospectively not less than 30 days after publication in the Federal Register and not later than 120 days from the date of enactment of this Act.

(e) For the purpose of this section—

(1) a "prepayment" occurs upon—

(A) the refinancing or consolidation of the indebtedness;

(B) the actual prepayment of the indebtedness by the consumer whether voluntarily or following acceleration of the payment obligation by the creditor; or

(C) the entry of a judgment for the indebtedness in favor of the creditor;

(2) the term "actuarial method" means the method of allocating payments made on a debt between the outstanding balance of the obligation and the precomputed finance charge pursuant to which a payment is applied first to the accrued precomputed finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation;

(3) the term "precomputed finance charge" means interest or a time price differential within the meaning of sections 106(a)(1) and (2) of the Truth in Lending Act (15 U.S.C. 1605(a)(1) and (2)) as computed by an add-on or discount method; and

(4) the term "residential manufactured home" means a mobile home as defined in section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974 which is used as a residence.

(f) The Federal Home Loan Bank Board is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(g) This section takes effect on April 1, 1980.

APPENDIX H

12 C.F.R. § 590.4(h):

Notice before repossession, foreclosure, or acceleration. (1) Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice, shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as described above. The debtor is not entitled to notice of default more than twice in any one-year period.

(2) The notice in the following form shall state the nature of the default, the action the debtor must take to cure the default, the creditor's intended actions upon failure of the debtor to cure the default, and the debtor's right to redeem under state law.

TO: _____

DATE: _____, 19____.

_____

_____

NOTICE OF DEFAULT AND RIGHT TO CURE DEFAULT

Name, address, and telephone number of creditor _____

Account number, if any _____

Brief identification of credit transaction _____

_____

You are now in default on this credit transaction. You have a right to correct this default within 30 days from the postmarked date of this notice.

If you correct the default, you may continue with the contract as though you did not default. Your default consists of: _____
Describe default alleged _____

Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by (describe the acts necessary for cure, including, if applicable, the amount of payment required, including itemized delinquency or deferral charges).

_____

_____

Creditor's rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law by (describe action creditor intends to take).

_____

If you have any questions, write (the creditors) _____ at the above address or call (creditor's designated employee)_____ at (telephone number) _____ between the hours of _____ and _____ on (state days of week) _____.

If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order, do not send cash.

[45 FR 43686, June 30, 1980, as amended at 45 FR 46341, July 10, 1980; 45 FR 50556, July 30, 1980]

RETAIL INSTALMENT CONTRACT

Customer (which also means "debtor" and includes all purchasers jointly and severally) has today purchased from Secured Party, hereinafter called "Seller", on a deferred payment price basis, under the terms and provisions on the face and back of this Security Agreement, hereinafter called "contract", and accepted in its present condition, the following property.

ACCOUNT NO. _____ DATE 6-27-91

NEW OR USED	YEAR AND MAKE OF MOBILE HOME	SERIES NAME (Also Title # if applicable)	LENGTH	WIDTH	COLOR	IDENTIFICATION NO (Serial No.)
New	1991 Liberty	Liberty	68'2"	24'/8'	Black	021406 [illegible]

EQUIPMENT INCLUDED

☐ Air Cond. Unit(s) ☒ Range ☒ Refrigerator ☐ Freezer ☐ Washer ☐ Dryer
☒ Furniture (As per Mfg. floor plan) ☐ Awnings ☐ Skirting ☐ Acc. Shed ☐ Other _____

PROPERTY TO BE KEPT AT	COUNTY OF	# or other than Customer's address, enter location →	NUMBER AND STREET, CITY, STATE AND ZIP CODE
	Aiken		Same

	CUSTOMER Name	Number and Street	City, State and Zip Code	ZIP CODE
CUSTOMER	Arthur Quiller and Lillie Mae Quiller	Rt. 2 Box 476	North Augusta, South Carolina	29841

	CREDITOR (SELLER) Name	Number and Street	City, State and Zip Code	ZIP CODE
CREDITOR	Vintage Enterprises Inc. DBA/ Colonial Mobile Homes Inc.	1951 Gordon Hwy.	Augusta, Georgia	

CREDITOR (ASSIGNEE) | BARCLAYSAMERICAN/CREDIT, INC. (SEE ASSIGNMENT BELOW)

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION.

INSURANCE

The purchase of Credit Life or Credit Life and Credit Accident & Health Insurance is not required. Customer, however, having first examined the cost of said insurance, as indicated herein, does voluntarily elect to purchase the following coverages:

☐ Single Decreasing Credit Life Insurance (item 6d) for term of contract on One Customer
signing at a Cost of $_____

☐ Joint Decreasing Credit Life Insurance (item 6d) for term of contract on Both Customers
signing at a Cost of $_____

☐ Credit Accident and Health Insurance (item 6e) for term of contract on First Customer
signing at a Cost of $_____

(Credit Accident and Health Insurance can be purchased only if same form of Credit Life Insurance is elected.) Any insurance elected above will cover only the individual or individuals named in the certificate or policy of insurance.

Dated _____ (to be completed by Customer)

Signature of Customer to be insured under either form of Credit Life Insurance and also under Credit Accident and Health Insurance (if elected)

Signature of co-insured Customer (if Single Life authorized) or co-insured under Joint Life Credit Life Insurance (but only if Joint Life authorized)

(NOTE: If insurance is desired, all Customers must authorize.)

CANCELLATION: Customer may, within **30** days after receipt of the policies or certificates of insurance, cancel all (but not part) of credit life and credit accident and health insurance or credit disability insurance elected above by returning all credit life and credit accident and health insurance certificates received in connection with this contract to the Assignee (the contract and having all parties obligated on the contract agree in writing to such cancellation. Upon cancellation, the cost of such insurance shall be refunded or credited to the account.

Customer has the right to choose the agent or company through which Property or Physical Damage Insurance (items 6f and 6g) is to be obtained. The total cost of such insurance, if obtained through Seller, is $ 1,339.20 for a term of 12 months from the date hereof.

IF PHYSICAL DAMAGE INSURANCE NOT INCLUDED HEREIN, CUSTOMER HAS PURCHASED SAME FROM

William H. McCormack
(Agent's Name)
Atlanta Georgia
(Agent's Address)
American Modern Homes
(Name of Insurance Company)

1. Cash Price (including sales tax)	$ 19[illegible].30
2. Cash Downpayment N/A	$ 1332.30
Trade-in: Year & Make _____	
Allowance: Gross $_____ Amt. Owing $_____ Net	$ .00
Amount owing on trad-in to be paid by ☐ Seller ☐ Customer	
Total Downpayment	$ 1332.30
3. Unpaid Balance of Cash Price (item (1) minus item (2))	$ 18[illegible].00
4. Fees Disbursed by Seller For Customer:	
a. Title Fee $_____ b. License Fee $_____ (Sum of items (4a) and (4b))	$ .00
5. Unpaid Balance of Cash Price Plus Fees Disbursed by Seller (Sum of items (3) and (4)) (Proceeds to Seller) →	$ 1[illegible].30
6. Other Charges:	
a. Recording Fee Title & UCC1	$ 7.00
b. Documentary Stamps	$ .00
c. Other Fees (Describe) _____	$ .00
d. Credit Life Insurance Premium	$ .00
e. Accident & Health Insurance Premium	$ .00
f. Other Ins. Premium (Describe) PI	$ 432.00
g. Physical Damage Insurance Premium for the following coverages and for a term of _____ months:	$ _____
☐ Comprehensive Coverage ☐ Secured Interest Protection	
☐ Comprehensive Personal Liability ☐ Natural Disaster Protection	
☐ Personal Effects ☐ Other (Describe) _____	
Total Other Charges (Sum of items (6a), (6b), (6c), (6d), (6e), (6f) and (6g))	$ [illegible]
7. Unpaid Balance/Amount Financed (Sum of items (3) and (6))	$ 16[illegible]
8. **FINANCE CHARGE**	$ 31[illegible]
ANNUAL PERCENTAGE RATE: 18.50 %	
9. Total of Payments (Sum of items (7) and (8))	$ 47[illegible]
10. Deferred Payment Price (Sum of items (1), (4), (6) and (9))	$ 51611.20

DATE FINANCE CHARGE BEGINS TO ACCRUE if Different from Date of Contract: _____, 19____
(If a date inserted here, this is the estimated delivery date of the property.)

SCHEDULE OF PAYMENTS

Customer agrees to pay Total of Payments (item 9 above) in _____ monthly instalments as follows:

(Check one block only)

☒ A first instalment of $ 263.43

☐ A final instalment of $ _____

☐ A final instalment consisting of a BALLOON PAYMENT of $ _____
(Insert as a BALLOON PAYMENT if the amount of the last instalment is more than twice the amount of any regularly scheduled equal instalment.) A BALLOON PAYMENT may be refinanced only upon such terms and conditions as the then parties to the contract may agree as of its due date.

AND

☒ 190 instalments of $ 263.43 each, all instalments payable the 1st date (or if no like date, then on last day) of each successive month beginning 7-27- 19 91, or if no date is specified, one month after the date of the contract. If unequal, irregular or other than monthly instalment(s) are shown below, they shall be made in addition to the instalments shown above or, if no instalments are shown above, such unequal or irregular payments shall be controlling as to the manner of payment.

$_____ on _____, 19____ $_____ on _____, 19____

$_____ on _____, 19____ $_____ on _____, 19____

*If an asterisk (*) appears beside any unequal, irregular or other than monthly instalments, such payment is a BALLOON PAYMENT, which may be refinanced as stated above for a final instalment BALLOON PAYMENT.

DELINQUENCY CHARGE: If an installment is in default 15 days or more, the Holder may charge and collect a delinquency charge not to exceed 5% of the installment or $5, whichever is less. Upon such delinquency, Holder may, subject to any notice of right to cure, accelerate the unpaid balance of the contract, in which event the unpaid balance, less the rebate of Finance Charge described below and rebate of any unearned insurance premiums included in this transaction, is due and payable. In connection with such delinquency, acceleration, or any repossession, Holder may collect reasonable attorney's fees (15% if not prohibited by law), if referred to an attorney not a salaried employee of Holder, and court costs.

PREPAYMENT: CUSTOMER HAS THE RIGHT TO PREPAY IN FULL OR IN PART THE UNPAID BALANCE OF THIS CONTRACT AT ANYTIME WITHOUT PENALTY. Upon prepayment in full, Customer shall be entitled to a rebate of the unearned portion of the Finance Charge, computed by the actuarial method, except that no rebate of less than $1 will be given.

SECURITY INTEREST: Holder (meaning Seller or its assignee if the contract is assigned) is granted and shall retain a security interest and lien interest in the following described property to secure this transaction and any renewal, extension or refinancing (NOTE: Applicable only if marked):

☒ 1. A purchase money security interest, pursuant to the Uniform Commercial Code and in accordance with the Security Agreement set forth on the reverse side, in the above described property and all equipment, tires, accessories, parts, radios, televisions, furniture, appliances and attachments now or later attached to it, but only if such constitute accessions under the Uniform Commercial Code, and the proceeds of the foregoing (all referred to in the Security Agreement on the reverse side as "Collateral").

☐ 2. A Deed to Secure Debt (or Mortgage) lien on Customer's real property located at the above address on which the above described property will be placed (or if on a different address, real property located at _____).
This lien interest is evidenced by a Deed to Secure Debt (or Mortgage), a copy of which is attached hereto and made a part hereof.

☒ 3. The proceeds of any physical damage insurance covering the Collateral, the proceeds of any credit life or credit accident and health insurance selected by the Customer, and returned or unearned premiums of such insurance.

☒ 4. Customer's execution of this agreement constitutes a waiver of Customer's personal property and homestead exemption rights to the personal and real property herein described.

CUSTOMER AGREES TO ABIDE BY THE TERMS OF THE SECURITY AGREEMENT ON THE REVERSE SIDE.

Customer, having been quoted both a deferred payment price and a cash price, has elected to buy the property for the above stated deferred payment price.

NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.

Accepted: The foregoing contract is hereby assigned under the terms of the assignment on the reverse side to the following Creditor:

BARCLAYSAMERICAN/CREDIT, INC.
917 REYNOLDS STREET
AUGUSTA, GEORGIA 30902

Ventace Enterprises Inc. DBA/
[illegible] Mobile Homes, Inc.

By _____ Title _____

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT WHICH WAS COMPLETELY FILLED IN PRIOR TO CUSTOMER'S EXECUTION HEREOF.

_____ CUSTOMER

_____ CUSTOMER

CONSENT TO DEED TO SECURE DEBT (OR MORTGAGE) INTEREST

In consideration of Seller's entering into this transaction with Customer, the undersigned hereby consents to the Deed to Secure Debt (or Mortgage) interest on the real property described above and agrees to sign a Deed to Secure Debt (or Mortgage) to evidence this consent.

_____ WITNESS _____ SIGNATURE

_____ WITNESS _____ SIGNATURE

Form No. 8809-SM (GA.) (3-81) (Mobile Home Only)
PERSONAL PRESUMPTION CONTRACT

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

ORIGINAL — FILE IN FIREPROOF FILE CABINET

NOTICE OF PROPOSED LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Credit life and credit accident and health insurance is included in this transaction only if a charge therefor is set forth herein, as indicated in the "Insurance" section on the reverse side, subject to acceptance by the insurer, The Citadel Life Insurance Company, P. O. Box 31488, Charlotte, North Carolina 28231 (for credit life and credit accident and health insurance on Motor Vehicle and Recreational Vehicle Contracts), or Paramost Life Insurance Company, P. O. Box 2450, Grand Rapids, Michigan 49501 (for credit life insurance on all Mobile Home Contracts and Recreational Vehicle Contracts if the total of payments shown on the reverse side exceeds $10,000), as applicable. The amount of premiums and the type of insurance purchased are set out on the reverse side in the "Insurance" section. Such insurance will cover only the individual(s) designated and agreeing as insured in the "Insurance" section set forth on the reverse side, such agreement(s) characterizing signed acceptance by such individual(s) of this notice. The term of such insurance will commence as of the date the indebtedness is incurred and will be the same as the term of the indebtedness, which is set forth on the reverse side. The amount of credit life insurance will pay Holder (creditor) the amount of indebtedness, if any, owing at the time of death subject to a maximum amount under the applicable group policy of $20,000 (The Citadel Life Insurance Company) or $30,000 (Paramost Life Insurance Company), as applicable. The amount of credit accident and health insurance will pay Holder monthly benefits in installments equivalent to the monthly payments required under the contract for the term of any disability covered by the policy, subject to a maximum amount of the smaller of either the initial amount of indebtedness (total of payments shown on reverse side) or $10,000 under the group policy. All such insurance proceeds will be applied to reduce or discharge the indebtedness. If insurance is declined by the insurer or otherwise does not become effective, any premium therefor will be credited or paid to the individual(s) entitled thereto and if insurance is terminated prior to the scheduled maturity date of the indebtedness, any premium refund due will be credited or paid promptly to the individual(s) entitled thereto, the refund being computed in accordance with the refund formulas on file with the state Insurance Department. In order to induce insurer to effect any such insurance, the individual(s) desiring such coverage declares to the best of his knowledge and belief that he is now in good health and he authorizes any physician or hospital to disclose to insurer, in the event of his death or disability, all information concerning his death or disability as well as his medical history prior to the date of this transaction. All the foregoing is subject to all terms, conditions and provisions of the policies or certificates to be issued.

SECURITY AGREEMENT

The Collateral shall be at Customer's risk and Customer shall procure and maintain for the term hereof insurance against all physical damage risks of Customer's expense in such form and for such amounts as Holder may require, the proceeds thereof to be payable as interest shall appear, with mortgagee's loss payable clause attached. Holder may, as creditor of Customer, purchase such insurance effective thereafter, although nothing herein contained shall impose a duty upon Holder to do so. Customer will reimburse Holder for the actual cost of such insurance to the extent that the same is not included in the deferred payment price, the amount of such reimbursement together with a Finance Charge at the highest lawful rate, to be paid in equal installments over the remaining term concurrently with the remaining unpaid installments set forth above, and to constitute an additional obligation of Customer hereunder. Customer hereby assigns to Holder any moneys not in excess of the unpaid balance hereunder which may become payable under such and other insurances, including return or unearned premiums, and directs any insurance company to make payments directly to Holder to be applied to said unpaid balance and appoints Holder as attorney in fact to endorse any draft in the event of any default under this contract. Holder is authorized to cancel said insurance and credit any premium refund received against said unpaid balance.

Customer agrees: to pay promptly all taxes and assessments upon the Collateral and for its use or operation and on this contract; to keep the Collateral in good condition and free from liens, libels, claims or charges of any kind; that all equipment, tires, accessories, parts, radios, and attachments installed on or affixed to the Collateral shall, as defined by the Uniform Commercial Code, become part of the Collateral by accession; not to sell, encumber or abandon the Collateral or use it for hire, charter or illegally; not to remove or attempt to remove said Collateral from the county and state given above as Customer's address without notifying Holder in writing and not remove the Collateral from the continental United States without the Holder's express written consent to keep and maintain the Collateral as personal property only and not to allow it to become part of any freehold; to send notice by registered mail to Holder after repossession but before resale of the Collateral if Customer claims that any articles not included herein were contained in the Collateral at the time of repossession, failure to do so being a waiver of and bar to any subsequent claim therefor. Any notice to Customer shall be sufficiently given if mailed to the address of Customer hereof herein.

Time is of the essence. Holder may collect a delinquency and collection charge on each instalment in default for 15 days or more in an amount not exceeding 5% of each said instalment of $5, whichever is less. If Customer defaults on any obligation under this contract, or if Holder shall consider the indebtedness or the Collateral insecure, the full balance may, upon election of Holder without notice, subject to any notice of right to cure, become due and payable, less the required rebate of the Finance Charge, and rebate of any unearned insurance premiums included in this transaction, together with reasonable attorney's fees (15% if not prohibited by law) if this contract is referred for collection to an attorney, plus court costs. Customer agrees in any such case to pay said amount or, at Holder's election, to deliver the Collateral to Holder, and Holder may, without notice or demand for performance or legal process, peaceably enter any premises, but not into any dwelling, where the Collateral may be found, peaceably take possession of it and custody of anything found in it. Upon default, Holder shall have all of the remedies of a secured party under the Uniform Commercial Code. The Collateral may be sold, leased or otherwise disposed of with or without notice publicly or privately, with or without having the Collateral at the sale, and Holder may require the Collateral at any such disposition. The proceeds of disposition less all expenses of retaking, storing, repairing and selling, and to the extent permitted by applicable law, attorney's fees and legal expenses incurred by the Holder shall be credited to the unpaid balance due hereunder. Customer is liable for, and shall forthwith pay any deficiency; any surplus shall be paid to Customer. It is agreed that sale to a dealer is a commercially reasonable method of disposition, and that if prior notice to Customer of a sale or other intended disposition of the Collateral is required, 5 days' notice to Customer is reasonable notice.

If Seller assigns this contract, Seller shall not be assignee's agent for transmission of payments or for any purpose.

Waiver of any default or acceptance of any past due payment shall not be a waiver of any subsequent or any other default. Holder's rights and remedies hereunder are cumulative. If any part of this contract is invalid, unenforceable or inconsistent with the applicable laws or regulations of the State of Seller's address herein, such part shall be deemed amended, modified or deleted to conform thereto.

No change in this contract shall be binding unless in writing and no agreement, representation or warranty shall be binding on the Holder unless expressly contained herein.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

GUARANTY

In consideration of the acceptance of the instrument on the reverse side hereof, or its purchase by any assignee, we jointly and severally guarantee to any Holder the payment promptly when due of every instalment thereunder and the payment on demand of the entire unpaid balance and all other obligations of Customer thereunder, including reasonable attorney's fees, if Customer defaults in any payment of any instalment at its due date or in any other manner, without first requiring Holder to proceed against Customer. We warrant that the contract is genuine, legally valid and enforceable and waive notice of acceptance hereof and of default thereunder and consent that Holder may, without affecting our liability, compromise or release, by operation of law or otherwise, any rights against and grant extensions of time of payment to Customer and other obligors. If we default on any obligation under this Guaranty and Holder refers the same to an attorney for collection, we shall also be liable to and pay Holder attorney's fees (15% of the amount in default, if not prohibited by law), court costs and disbursements. Witness our hands and seals.

CORPORATE GUARANTOR

_____ (SEAL)
NAME OF GUARANTOR

BY _____
TITLE

INDIVIDUAL GUARANTOR

_____ (SEAL)
NAME

_____ (SEAL)
NAME

TERMS OF SELLER'S ASSIGNMENT

We hereby sell and assign the contract on the reverse side and all interest in the property described on the front hereof, together with any Deed to Secure Debt (or Mortgage) given as security for this contract, and our rights under any guaranty to Assignee shown on the front hereof (hereinafter called "you") without recourse as to Customer's obligation of payment, except as may be otherwise provided in any underlying agreement between us, with full power to you in your or our name to collect and discharge the same and to take all such legal or other proceedings as we might take, save for this assignment. We warrant that the contract, Deed of Secure Debt (or Mortgage) and any guaranty are genuine, legally valid and enforceable; we have complied with all disclosure requirements imposed by the applicable Federal and State Laws and Regulations; we have complied with all applicable Federal and State Laws and Regulations relating to the contract and the establishment of the contract and any Deed to Secure Debt (or Mortgage) given as security hereto; we hereby convey good title thereto; all statements of facts therein are true, the Customer was quoted the cash price and the deferred payment price as stated therein, no part of the down payment shown as paid in cash is owing by loan or note and any trade-in shown was received by us for the allowance stated therein; all statements made by Customer on any forms related thereto are true to our knowledge and belief; we have clear title to the property, free of all liens and encumbrances, except for this contract; any Deed to Secure Debt (or Mortgage) taken as security for this contract has been duly recorded and is a first lien or encumbrance on the property described, except as expressly noted therein. Customer is not a minor and has capacity to contract; Certificate of Title showing the first lien or encumbrance in your favor has been or will be forthwith obtained. with the lien thereon perfected as of the date of the contract, if permitted by law. We further warrant and agree to abide by all agreements, warranties or guaranties, either express, implied or required by law, afforded Customer relative to the property described on the front hereof. All warranties herein contained are made to induce you to purchase this contract and if there is a breach of any, or if Customer withholds payment, as required under the contract, because Customer alleges a claim, defense or set-off against us, without regard to your or our knowledge or lack of knowledge with respect thereto or your reliance thereon, we will on demand purchase the contract from you for the balance then remaining unpaid, plus any and all costs and expenses paid or incurred in respect thereto; in addition, if Customer recovers any amounts from you as a result of such claim, we will reimburse you for such amounts paid to Customer. We waive all demands and notice of default and consent that, without notice to us, you may extend time to or compound or release, by operation of law or otherwise, any rights against Customer or any other obligor. If we execute any guaranty covering this transaction, the words "without recourse as to Customer's obligation of payment" are deemed deleted, and, notwithstanding the provisions of any underlying agreement whatsoever between us, your recourse as to us on this assignment shall be as stated in such guaranty. If we do not execute any such guaranty and have no underlying agreement with you governing our assignment to you of contracts for the type of chattel here sold, then notwithstanding anything in this assignment, this contract shall be deemed sold to you, as to recourse, with our assignment to you in your standard full recourse form.

(See other side for Seller's signature to assignment)

Form No. 8069-GA (GAL) (3-69)
Mobile Home Order
FEDERAL PREEMPTION CONTRACT

APPENDIX J

Letter dated October 28, 1982 from:

Federal Home Loan Bank Board
1700 G. Street, N.W.
Washington, D.C. 20552

to:

D. Edwin Schmelzer, Esq.
Witkowski, Weiner, McCaffrey
& Brodsky, P.C.
Suite 350
1575 Eye Street, N.W.
Washington, D.C. 20005

Dear Mr. Schmelzer:

This responds to your letter of October 7 requesting an interpretation of Board regulation section 590.4(h) (12 C.F.R. § 590.4(h) (1982)), which contains consumer protection requirements relating to the financing of manufactured homes and preempts state usury laws if those requirements are met. The sole issue presented by your letter is whether section 590.4(h) requires that a manufactured home credit agreement recite the purchaser's right to thirty days' notice as a condition of preemption of state usury laws.

Paragraph (h)(1) of section 590.4 states, in relevant part:

> Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in subparagraph (h)(2) of this section.

This requirement refers only to the act of giving notice; neither paragraph (h) nor the Congressional legislation that it implements (Depository Institutions Deregulation and

Monetary Control Act of 1980, Pub. L. No. 96-221, § 501, 94 Stat. 161-63 (1980)) expressly requires that a covered credit agreement recite the purchaser-borrower's right to notice. Furthermore, there are no legislative or regulatory history materials suggesting that either Congress or the Board intended an implicit requirement of a contractual notice provision. If a contractual notice provision requirement had been intended, it is reasonable to assume that the Board would have expressly so provided, as it did in paragraphs (d) (prepayment without penalty), (e) (terms of balloon payments), (f) (late charges), and (g) (agreements for deferral of fees) of section 590.4. In light of these considerations, it is the view of this Office that section 590.4(h) does not require that the terms of a manufactured home credit sale agreement recite the purchaser's right to thirty days' notice of acceleration or repossession.

Please feel free to contact this Office if you should have further questions.

Sincerely,

/s/ Thomas P. Vartanian

THOMAS P. VARTANIAN
General Counsel

APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

On Appeals From The United States District Court
For The Southern District of Georgia

ARTHUR QUILLER,
et al.

Plaintiff-Appellants,

v.

BARCLAY AMERICAN/
CREDIT, INC.

Defendant-Appellee.

CASE NO. 83-8455

JACK GRANT, JR. AND
EVEVYN H. GRANT,

Plaintiff-Appellants,

v.

GENERAL ELECTRIC
CREDIT CORPORATION,

Defendant-Appellee.

CASE NO. 83-8456

BRIEF OF AMICUS CURIAE
FEDERAL HOME LOAN BANK BOARD

OF COUNSEL:

Ralph W. Christy
Acting General Counsel

Harvey Simon
Associate General Counsel

John E. Gunther
Deputy Director
Litigation Division

James T. Lantelme
Trial Attorney

Federal Home Loan
Bank Board

STATEMENT REGARDING PREFERENCE

These cases are not entitled to preference in processing or disposition.

TABLE OF CONTENTS

Page(s)

STATEMENT REGARDING PREFERENCE i

TAPLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

I. INTEREST OF THE FEDERAL HOME LOAN BANK BOARD AND STATEMENT OF THE CASE 1-2

II. STATEMENT OF THE ISSUES 2

III. SUMMARY OF ARGUMENT 3

IV. JURISDICTION 3

V. ARGUMENT AND CITATION OF AUTHORITIES 3-8

A. The Lower Court Opinions Should Be Affirmed Because They Are Consistent With The Board's Interpretation of 12 C.F.R. § 590.4(d) 4-6

B. The Lower Court Opinions Should Be Affirmed Because They Are Consistent With The Board's Interpretation of 12 C.F.R. § 590.4(h)(1) 6-8

VI. CONCLUSION 8

TABLE OF AUTHORITIES

Cases	Page(s)
Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980)	2
Moyer v. Citicorp Homeowners, Inc., No. CV 183-93 (S.D. Ga. Aug. 23, 1983) *appeal docketed*, No. 83-2085 (11th Cir.)	1,4
Statutes, Rules and Regulations	
Federal Home Loan Bank Act:	
12 U.S.C. §§ 1421 *et seq.*	1
Depository Institutions Deregulation & Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161 (1980) (codified at 12 U.S.C. § 1735f-7 note):	
12 U.S.C. 1735f-7 note	1,7
12 U.S.C. § 1735f-7 note (a)(1)	3
12 U.S.C. § 1735f-7 note (c)	3
12 U.S.C. § 1735f-7 note (d)	3
12 U.S.C. § 1735f-7 note (f)	1
28 U.S.C. § 1291	3
Fed. R. App. P. 29	2
12 C.F.R. § 226.8(b)	5
12 C.F.R. § 590.3	3
12 C.F.R. § 590.4	3
12 C.F.R. § 590.4(d)	1,3,4,5,6,7,8
12 C.F.R. § 590.4(e)	7
12 C.F.R. § 590.4(f)	7
12 C.F.R. § 590.4(g)	7
12 C.F.R. § 590.4(h)	1,3,7,8
12 C.F.R. § 590.4(h)(1)	6,7
Miscellaneous	
45 Fed. Reg. 43684 (June 30, 1980)	5

I. INTEREST OF THE FEDERAL HOME LOAN BANK BOARD AND STATEMENT OF THE CASE

The Federal Home Loan Bank Board ("Board") is an independent federal regulatory agency created in 1932 under the Federal Home Loan Bank Act, 12 U.S.C. §§ 1421 *et seq.*, and has the authority under the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 161 (1980) (the "Act") (codified at 12 U.S.C. § 1735f-7 note), to interpret regulations that it promulgates concerning federally-related loans and mortgages secured by first liens on residential manufactured housing.

Plaintiff-appellants in *Quiller v. Barclays American/Credit, Inc.*, Case No. 83-8455 ("Barclays"), and *Grant v. General Electric Credit Corporation*, Case No. 83-8456 ("GECC"), have raised issues concerning the interpretation of two Board regulations promulgated under the Act: 12 C.F.R. § 590.4(d), concerning the disclosure in a manufactured housing credit agreement, of a borrower's right to prepay without penalty, and 12 C.F.R. § 590.4(h), concerning notice that must be given before a lender may repossess, foreclose, or accelerate the loan.[1]

The Board is interested in this litigation because it is authorized under the Act to publish interpretations governing its implementation, 12 U.S.C. § 1735f-7 note (f), and because the Board desires that judicial construction of Board regulations be consistent with the agency's intent in adopting the regulations. The United States Supreme Court in *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 565 (1980), has held that an agency's interpretation of its own regulations should be accorded "substantial deference" by a reviewing court unless the interpretation is "demonstrably

---

[1] The Board has been informed that these two regulations are at issue not only in the *Barclays* and *GECC* cases but also in the case of *Moyer v. Citicorp Homeowners, Inc.*, No. CV 183-93 (S.D. Ga. Aug. 23, 1983), *appeal docketed*, No. 83-2085 (11th Cir.).

irrational." The Board submits this amicus brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure which grants agencies of the United States the right to file amicus briefs without first obtaining the consent of the parties or leave of the Court.[2]

II. STATEMENT OF THE ISSUES

Due to the potential impact of these cases upon the manufactured housing lending industry and due to the Board's responsibility to regulate various aspects of that industry, the Board respectfully submits this *amicus* brief addressed solely to the following two issues: (1) What disclosure of a borrower's right to prepay without penalty must be made under Board regulation by a lender in its manufactured home credit agreement as a condition of federal preemption of state usury laws; and (2) whether the Board's regulation requires a manufactured home credit agreement to recite the borrower's right to thirty-days notice before acceleration, repossession, or foreclosure as a condition of federal preemption of state usury laws.

III. SUMMARY OF ARGUMENT

Plaintiff-appellants have contended that alleged violations of two of the Board's consumer protection regulations require that the defendants in *Barclays* and *GECC* lose the usury preemption granted by federal statute for the transactions at issue. The Board's General Counsel has issued opinions concerning both regulations and the opinions are in accord with the District Court rulings, dismissing the plaintiff-appellants' cases for failure to state a claim. The interpretations of the Board's regulations are to be ac-

---

[2] The Board deeply regrets that because it only learned of the pendency of these cases quite recently, it was unable to file this brief in a more timely manner and apologizes for any inconvenience that this filing may cause. However, the Board believes that these cases present very important issues impacting greatly on the Board's regulatory scheme and feels compelled to make its views on these issues known to the Court.

corded substantial deference by this Court unless they are demonstrably irrational. Because the interpretations are reasonable, the plaintiff-appellants' arguments that the district court rulings should be reversed because of their different interpretation of the Board's regulations should be rejected by this Court.

IV. JURISDICTION

This Court has jurisdiction from final orders of the U.S. District Court for the Southern District of Georgia pursuant to 28 U.S.C. § 1291.

V. ARGUMENT AND CITATION OF AUTHORITIES

Under the Act, state usury limits on loans secured by first liens on residential manufactured homes are preempted as long as the loans are made in conformance with the Board's consumer protection regulations with respect to, *inter alia*, prepayment penalties and foreclosure notices both of which are at issue herein. 12 U.S.C. § 1735f-7 note (a)(1), (c) and (d); 12 C.F.R. §§ 590.3 and .4.

We demonstrate below that the lower court's opinions should be affirmed because they are consistent with the Board's interpretation of its regulations.

A. The Lower Court Opinions Should Be Affirmed Because They Are Consistent With The Board's Interpretation Of 12 C.F.R. § 590.4(d).

The Board's regulation at 12 C.F.R. § 590.4(d) (1980) states that "the right to prepay shall be disclosed in type larger than that used for the body of the document." The Board's General Counsel has issued an opinion stating the intent of the Board in promulgating its regulation concerning type-size for the disclosure required by section 590.4(d). Appendix A ("Opinion").

Briefly, the Board was requested by defendants in *Moyer v. Citicorp Homeowners, Inc.*, (p. 1, *supra*), to issue an opinion regarding its interpretation of the requirements under 12 C.F.R. § 590.4(d). In *Moyer*, a question arose as to the sufficiency of a disclosure made by Citicorp Homeonwers, Inc. in its residential manufactured housing credit agreements. The credit agreements in question disclosed the prepayment rights in boldface type with initial letters of all but a few words in the upper case. The type in question, although larger than most of the other type on the page, was not the largest type above the signature line. The issue presented was whether the consumer's right to prepay the outstanding balance of a loan was properly disclosed in a type larger than that used for the body of the document in accordance with section 590.4(d).

The Opinion concluded that such disclosure is proper under section 590.4(d) because the type was, in fact, larger than the type in the body of the document in that it was in boldface, each letter being printed in lines thicker than those of the letters used in the body of the contract and because most of the initial letters of the words in the notice were capitals, unlike the initial letters of words appearing in the body of the document which were capitalized infrequently.[3] The Opinion points out that the regulatory provision does not require a specific type, nor does it require that the debtor's prepayment right be disclosed in type larger than that used for all other notices or provisions.

As originally promulgated, section 590.4(d) required that the right to prepay disclosure be "conspicuously" printed on the loan document. The Board received comments that the word "conspicuous" had been litigated in connection with a requirement of Federal Reserve Regulation Z (12 C.F.R. 226.8(b)), and that such "conspicuousity" requirement "might give rise to questions whether the print must

---

[3] Words are capitalized in the body of the document only if beginning a sentence or if they begin terms such as "Buyer" or "Seller."

be as large as, same as, or larger than that required by Regulation Z." 45 Fed. Reg. 43684 (June 30, 1980). The Board considered this comment and agreed that the "conspicuousity" requirement "may be potentially troublesome" and, therefore, changed the requirement "so that type-size larger than that used in the body of the loan document may be used to call attention to this provision." *Id.*

Nowhere in either the Board's regulations or the Act is there any requirement that the type-size be the largest above the signature line. The Board deliberately promulgated section 590.4(d) to avoid the ambiguity of the word "conspicuous" and foreclose comparison with type-sizes of potentially competing disclosures such as Federal Reserve Regulation Z.

In light of the Opinion, a review of the Barclays and GECC credit agreements reveals that the disclosures required by section 590.4(d) are proper and meet the criterion of the section. The Barclays credit agreement disclosure meets the section 590.4(d) criterion because it is in boldface and is in a type-size larger than that in the body of the document. The GECC credit agreement disclosure meets the section 590.4(d) criterion because it is in a type-size larger than that in the body of the document.

B. The Lower Court Opinions Should Be Affirmed Because They Are Consistent With The Board's Interpretation of 12 C.F.R. § 590.4(h)(1)

Plaintiff-appellants also contend that neither Barclays or GECC qualify for the federal usury preemption for their residential manufactured housing loans because neither credit agreement contains notice of the debtor's right to 30-day notice before repossession, foreclosure or acceleration upon default and right to cure the default. However, this argument is directly at odds with the Board General Counsel's October 28, 1982, interpretation of the applicable Board regulation. Appendix B ("Opinion II"). The Board's

regulation concerning notice before repossession, foreclosure, or acceleration says —

> Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as described above. The debtor is not entitled to notice of default more than twice in any one-year period.

12 C.F.R. § 590.4(h)(1) (1980).

Opinion II states that the requirements of section 590.4(h) only referred to the *act* of giving notice. Opinion II further points out that neither paragarph (h) nor the Congressional legislation that it implements, 12 U.S.C. § 1735f-7 note (1980), expressly requires that a covered credit agreement recite the purchaser-borrower's right to notice. Furthermore, Opinion II highlights the fact that there are no legislative or regulatory history materials suggesting that either Congress or the Board intended an implicit requirement of a contractual notice provision. Opinion II reasons that if a contractual notice provision requirement had been intended, it is reasonable to assume that the Board would have expressly so provided, as it did in paragraphs (d) (prepayment without penalty), (e) (terms of balloon payments), (f) (late charges), and (g) (agreements for deferral of fees) of section 590.4.

In light of the enormous potential liabilities that would result from the loss of the federal usury preemption, the

Board believes that the only requirements that a lender under section 590.4(h) must reasonably be expected to be aware of and follow are those explicitly set forth in the regulation or the Act. It is clear that section 590.4(h) does not require either explicitly or implicitly that the terms of a manufactured home credit sale agreement recite the purchaser's right to a thirty-days' notice of acceleration, repossession, or foreclosure or the right to cure the default.

VI. CONCLUSION

The Board believes that the General Counsel's interpretation of the Board's two regulations, 12 C.F.R. §§ 590.4(d) and (h) are correct and in accord with the Board's intent. Because the interpretations certainly are reasonable (and not "demonstrably irrational") they should be accorded "substantial deference" and are dispositive of the issues concerning the regulations raised by plaintiff-appellants in *Barclays* and *GECC*. Because plaintiff-appellants' arguments are directly inconsistent with the opinions of the Board's General Counsel and with the Board's intent, this Court should reject plaintiff-appellants' arguments and uphold the district court's dismissal of these suits on these two issues.

Dated: November 30, 1983 Respectfully submitted,

Of Counsel:

Ralph W. Christy
Acting General Counsel

/s/ Harvey Simon
HARVEY SIMON
Associate General Counsel

/s/ John E. Gunther
JOHN E. GUNTHER
Deputy Director
Litigation Division

/s/ James T. Lantelme
JAMES T. LANTELME
Trial Attorney

Federal Home Loan Bank
Board
1700 G Street, N.W.
Washington, D.C. 20552
(202) 377-6420

CERTIFICATE OF SERVICE

I certify that on November 30, 1983, I mailed a copy of the Brief of Amicus Federal Home Loan Bank Board to the following attorneys for the parties in these cases.

David E. Hudson Esq.
P.O. Box 1564(13)
Augusta, Georgia 30913

John B. Long, Esq.
1500 Georgia Railroad Bank Building
Augusta, Georgia 30910

Thomas W. Tucker, Esq.
P.O. Box 2426
Augusta, Georgia 30903

Jay M. Sawilowsky
907 Georgia Railroad Bank Building
Augusta, Georgia 30910

Byron Attridge
King & Spalding
2500 Trust Co. Tower
Atlanta, Ga. 30303

Douglas N. Campbell
Mitchell, Loggins, Campbell & Elsberry
The Equitable Bldg. No. 950
100 Peachtree St.
Atlanta, Ga. 30303

/s/ James T. Lantelme
JAMES T. LANTELME

APPENDIX A

November 30, 1983

D. Edwin Schmelzer, Esq.
Witkowski, Weiner, McCaffrey
& Brodsky, P.C.
Suite 350
1575 Eye Street, N.W.
Washington, D.C. 20005

Dear Mr. Schmelzer:

This is in response to your letter of August 11, 1983, in which you request an interpretation of a regulatory provision issued by the Federal Home Loan Bank Board ("Board"): paragraph (d), "Prepayment penalties" of 12 C.F.R. § 590.4 (1983), "Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes."

You have asked whether a particular retail installment sales contract used by your client, Citicorp Acceptance Company, meets the regulatory standard. This question has arisen in connection with litigation involving the contract, in which a major issue is whether the prepayment disclosure notice meets the requirements of section 590.4(d). The prepayment notice appears in two places. The first is a sentence in boldface type, and the initial letters of all but a few of the words of the sentence are in the upper case. This sentence appears in the upper left hand corner of the contract in the fourth line of print from the top and reads: "Buyer May Prepay the Unpaid Balance on this Contract in Whole or in Part at Any Time Without Penalty." The consumer's right to prepay is also stated as a paragraph in the body of the contract following the boldface caption "Prepayment Rebate." The specific issue you have asked us to address is whether the consumer's right to prepay the outstanding balance of a loan has been properly disclosed in accordance with 12 C.F.R. § 590.4(d). Paragraph (d) pro-

vides as follows: "[T]he right to prepay [the outstanding balance of a loan] shall be disclosed in the loan contract in type larger than that used for the body of the document."

Based on my review of the documents in question, I offer the following observations.

The regulatory provision does not by its terms require a specific type, nor does it require that the debtor's prepayment right be disclosed in type larger than that used for all other notices or provisions in the document. Nor does the provision require by its terms that where there are multiple notices of the right to prepay all such notices must be larger than the body.

The first notice of prepayment rights is, in fact, in type larger than that used for the body of the document in that (1) the type is boldface, each letter being printed in lines thicker than those of the letters used in the body of the contract, and (2) most of the initial letters of the words appearing in the first notice are capitalized, unlike the initial letters of words appearing in the body of the contract, which are capitalized only if beginning a sentence or if they begin significant terms such as "Buyer" or "Seller." The second notice of prepayment, following the caption "Prepayment Rebate," is not disclosed in type larger than that used for the body of the document, although the caption is larger.

Based on the foregoing, it is my opinion that the subject document meets the criterion of paragraph (d) of section 590.4.

Sincerely

/s/ Ralph W. Christy
RALPH W. CHRISTY
Acting General Counsel

APPENDIX B

October 28, 1982

D. Edwin Schmelzer
Witkowski, Weiner, McCaffrey
and Brodsky, P.C.
Suite 350
1575 Eye Street, N.W.
Washington, D.C. 20005

Dear Mr. Schmelzer:

This responds to your letter of October 7 requesting an interpretation of Board regulation section 590.4(h) (12 C.F.R. § 590.4(h) (1982)), which contains consumer protection requirements relating to the financing of manufactured homes and preempts state usury laws if those requirements are met. The sole issue presented by your letter is whether section 590.4(h) requires that a manufactured home credit agreement recite the purchaser's right to thirty days' notice as a condition of preemption of state usury laws.

Paragraph (h)(1) of section 590.4 states, in relevant part:

> Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in subparagraph (h)(2) of this section.

This requirement refers only to the act of giving notice; neither paragraph (h) nor the Congressional legislation that it implements (Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 501, 94 Stat. 161-63 (1980)) expressly requires that a covered credit agreement recite the purchaser-borrower's right to notice. Furthermore, there are no legislative or regulatory history materials suggesting that either Congress or the Board in-

tended an implicit requirement of a contractual notice provision. If a contractual notice provision requirement had been intended, it is reasonable to assume that the Board would have expressly so provided, as it did in paragraphs (d) (prepayment without penalty), (e) (terms of balloon payments), (f) (late charges), and (g) (agreements for deferral of fees) of section 590.4. In light of these considerations, it is the view of this Office that section 590.4(h) does not require that the terms of a manufactured home credit sale agreement recite the purchaser's right to thirty days' notice of acceleration or repossession.

Please feel free to contact this Office if you should have further questions.

Sincerely,

/s/ Thomas P. Vartanian
THOMAS P. VARTANIAN
General Counsel

APPENDIX L

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

On Appeals From The United States District Court
For The Southern District of Georgia

ARTHUR QUILLER,
et al.

Plaintiff-Appellants,

v.

BARCLAYS AMERICAN/
CREDIT, INC.

Defendant-Appellee.

CASE NO. 83-8455

JACK GRANT, JR. AND
EVELYN H. GRANT,

Plaintiff-Appellants,

v.

GENERAL ELECTRIC
CREDIT CORPORATION,

Defendant-Appellee.

CASE NO. 83-8456

BRIEF ON REHEARING OF AMICUS CURIAE FEDERAL HOME LOAN BANK BOARD BEFORE THE EN BANC PANEL

OF COUNSEL:

Norman H. Raiden
General Counsel

Ralph W. Christy
Deputy General Counsel

William K. Black
Associate General Counsel

Denise Z. Field
Acting Deputy Director
Litigation Division

James T. Lantelme
Trial Attorney

Federal Home Loan
Bank Board
Office of General Counsel
1700 G Street, N.W.
Washington, D.C. 20552
(202) 377-6420

Attorneys for the Amicus

STATEMENT REGARDING PREFERENCE

These cases are not entitled to preference in processing or disposition.

TABLE OF CONTENTS

STATEMENT REGARDING PREFERENCE i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

I. INTEREST OF THE FEDERAL HOME LOAN BANK BOARD AND STATEMENT OF THE CASE 1

II. STATEMENT OF THE ISSUES 3

III. SUMMARY OF ARGUMENT 4

IV. JURISDICTION 5

V. ARGUMENT AND CITATION OF AUTHORITIES 5

A. The Contracts' Provisions On Their Face Are Not Inconsistent With The Board's Regulation 6

1. Neither the Act nor the regulation requires a contractual provision concerning a debtor's right to 30-day notice of default and right to cure 7

2. The qualified provisions of the contracts concerning acceleration and foreclosure are not inconsistent with the Board's regulation 8

3. The Board's regulation protects borrowers by requiring lenders who wish to qualify for usury preemption to afford them all the rights provided by the Act and regulation 12

VI. CONCLUSION 13

TABLE OF AUTHORITIES

Cases	Page(s)
Briggs v. Household Finance Corp., 140 Ga. App. 75, 230 S.E.2d 55 (1976)	10, 11
Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980)	7
General Finance Corp. of Georgia v. Spouse, 577 F.2d 989 (5th Cir. 1978)	10, 11
Grant v. General Electric Credit Corp., 727 F.2d 1073 (S.D. Ga. 1984), *rehearing granted*, May 22, 1984	3, 8
Moyer v. Citicorp Homeowners, Inc., No. CV-183-93 (S.D. Ga. Aug. 23, 1983), *appeal docketed*, No. 84-8166 (11th Cir. Feb. 27, 1984)	1
Quiller v. BarclaysAmerican/Credit, Inc., 727 F.2d 1067 (S.D. Ga. 1984), *rehearing granted*, May 22, 1984	3, 8
Statutes, Regulations and Rules	
Federal Home Loan Bank Act of 1932: 12 U.S.C. §§ 1421 *et seq*	1
Depository Institutions Deregulation and Monetary Control Act of 1980:	
12 U.S.C. §§ 1735f-7 note, *et seq.* (1980)	1
12 U.S.C. § 1735f-7 note (a)(1) (1980)	5
12 U.S.C. § 1735f-7 note (c) (1980)	5, 6, 7, 9
12 U.S.C. § 1735f-7 note (d) (1980)	5
12 U.S.C. § 1735f-7 note (f) (1980)	3
28 U.S.C. § 1291	5

	Page(s)
12 C.F.R. § 590.3(a)	5
12 C.F.R. § 590.4(b)	5
12 C.F.R. § 590.4(d)	1, 6, 7, 13
12 C.F.R. § 590.4(h)	1, 6, 12, 13
12 C.F.R. § 590.4(h)(1)	7, 9
Ga. Code Ann. §§ 7-3-1 et seq. (1982)	10
Fed. R. App. P. 29	3

I. INTEREST OF THE FEDERAL HOME LOAN BANK BOARD AND STATEMENT OF THE CASE

The Federal Home Loan Bank Board ("Board") is an independent federal regulatory agency created in 1932 under the Federal Home Loan Bank Act, 12 U.S.C. §§ 1421 *et seq.*, and has the authority under the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 161 (the "Act") (codified at 12 U.S.C. § 1735f-7 note (1980)), to promulgate regulations concerning federally-related loans and mortgages secured by first liens on residential manufactured housing. The Board is also expressly authorized by the Act to interpret those regulations. *Id.*

Plaintiff-appellants ("Borrowers") in *Quiller v. Barclays American/Credit, Inc.*, Case No. 83-8455 and *Grant v. General Electric Credit Corporation*, Case No. 83-8456, both in their initial appeal briefs and their briefs submitted to the *en banc* panel, have raised issues concerning the interpretation of two Board regulations promulgated under the Act: (1) 12 C.F.R. § 590.4(h), concerning notice that must be given before a lender may repossess, foreclose, or accelerate on a loan in default, and (2) 12 C.F.R. § 590.4(d), concerning the disclosure in a manufactured housing credit agreement of a borrower's right to prepay without penalty.[1] The failure of a creditor to follow the Board's consumer protection regulations results in loss of the federal usury preemption.

These cases concern the attempts by Barclays American/Credit, Inc. ("Barclays") and General Electric Credit Corp. ("GECC") to foreclose on the Borrowers' mobile-homes secured by first-liens held by Barclays and GECC. The Bor-

---

[1] These two regulations are at issue not only in the *Barclays* and *GECC* cases but also in the case of *Moyer v. Citicorp Homeowners, Inc.*, No. CV 183-93 (S.D. Ga. Aug. 23, 1983), *appeal docketed*, No. 84-8166 (11th Cir. Feb. 27, 1984).

rowers brought these suits before the District Court for the Southern District of Georgia to challenge those actions by Barclays and GECC. The Borrowers claimed, *inter alia*, that the loans allegedly in default were usurious because the credit agreement forms used by Barclays and GECC were in violation of the Act and the Board's consumer protection regulations and thus were not covered by the federal usury preemption.

The District Court for the Southern District of Georgia dismissed both cases for failure to state a claim.[2] A panel of this Court, however, decided that because certain provisions of the contract forms in question concerning acceleration of unpaid debt and repossession were, in its opinion, "inconsistent" with the terms of one of the Board's consumer protection regulations concerning notice upon default, the contracts on their face violate one of the Board's consumer protection regulations and thus the contracts lose the usury preemption granted by the Act for the transactions at issue. Barclays and GECC petitioned for a rehearing *en banc* of these cases. On May 22, 1984, the Court vacated the panel's decision and granted rehearing *en banc*.[3]

The Board has an interest in this litigation because it is authorized under the Act to publish interpretations governing its implementation, 12 U.S.C. § 1735f-7 note (f), and because the Board desires that judicial construction of Board regulations be consistent with the agency's intent in adopting the regulations. This is of particular importance in these cases where the panel has written opinions that, while

---

[2] The Board expresses no view on the accuracy of the facts alleged in either of these cases. The Board's role is solely to provide the Court with the Board's interpretation of its own regulations.

[3] For the convenience of the Court, when referring to the vacated opinions, this brief shall cite to the cases as published in the Federal Reporter 2d. *Quiller v. Barclays American/Credit*, 727 F.2d 1067 (11th Cir. 1984) *vacated, rehearing granted* (May 22, 1984), and *Grant v. General Electric Credit Corp.*, 727 F.2d 1073 (11th Cir. 1984) *vacated, rehearing granted* (May 22, 1984).

purporting to defer to the Board's interpretation of its regulations, reach a result that is not consonant with the statute or regulations.

The Board has resubmitted its *amicus* brief already on file with the panel at the request of the *en banc* panel and submits this *amicus* brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure.

II. STATEMENT OF THE ISSUES

(1) Whether a form contract for a loan secured by a first lien on a residential mobile home must have a contractual provision stating that a debtor has the right to 30-day notice of default and right to cure.

(2) Whether a lender who in fact provides to a borrower all of the rights to notice of default and right to cure required by the Act nevertheless cannot qualify for usury preemption because a provision of its form contract might be read by some borrowers as not guaranteeing such rights to the borrower.

The Board submits that the answer to both questions should be "no".

III. SUMMARY OF ARGUMENT

The Act and regulation do not require inclusion of a clause explaining the borrower's right to notice of default and right to cure in the contract. The regulation generally requires that notice be given on default in order for a creditor to exercise its rights to accelerate, foreclose or repossess. However, this notice need not be given until such time as the creditor wishes to take such actions against a debtor. The panel agreed with this proposition.

Borrowers' argument that the acceleration provisions in the contracts are inconsistent with the consumer protections provided by the Act, and that usury preemption is unavailable where the contract contains such an inconsistency, must fail. While the contracts at issue here contain lan-

guage authorizing foreclosure on less than 30-days notice, the contracts also qualify the creditor's remedies by expressly preserving any rights to notice the debtor may possess. The Act and regulation permit acceleration, foreclosure and repossession without notice in certain circumstances. Therefore the alleged "inconsistency" between the contracts and the consumer protection provided by the Act is illusory. To require more explicit, contractual notice would mean requiring the very notice the Board has determined need not be placed in the contract.

In any event, the Board's regulation concerning notice of default and right to cure looks to the actions taken by creditors. Whether or not the notice is given in the contract, if the creditor fails to give the Board prescribed notice upon certain debtor defaults, the usury preemption is lost. Thus, the Board's regulation ensures that the creditor must *in fact* provide to the borrower any rights required by the Act if the borrower wished to take advantage of usury preemption. The regulation achieves the twin purposes of the Act: ensuring the availability of credit to relatively low income borrowers and providing certain protections to such borrowers in the event of default.

IV. JURISDICTION

This Court has jurisdiction of appeals from final orders of the U.S. District Court for the Southern District of Georgia pursuant to 28 U.S.C. § 1291.

V. ARGUMENT AND CITATION OF AUTHORITIES

Under the Act, state usury limits on loans secured by first liens on residential manufactured homes are preempted as long as the remedies used by a creditor are in conformance with the Board's consumer protection regulations with respect to, *inter alia*, foreclosure notices and prepayment penalties. 12 U.S.C. § 1735f-7 note (a)(1), (c) and (d); 12 C.F.R. § 590.3(a) and 590.4(b).

The Board demonstrates below that the Borrowers are incorrect in their claims that certain provisions of the Barclays and GECC contracts were inconsistent with the Board's regulations.

A. The Contracts' Provisions On Their Face Are Not Inconsistent With The Board's Regulation.

The Borrowers have contended that on their face both credit agreements violate the provisions of the Act and regulation concerning a debtor's right to 30-day notice of default and right to cure, 12 U.S.C. § 1735f-7 note (c)(2) and 12 C.F.R. § 590.4(h), and the regulation concerning disclosure of a debtor's right to prepayment, 12 C.F.R. § 590.4(d).

The Borrowers' arguments under these regulations, upon analysis, can be reduced to three questions: (1) does the Act or regulations require a full disclosure in the contract or a debtor's right to 30-day notice of default and right to cure under the Act and 12 C.F.R. § 590.4(h); (2) do the contracts' terms concerning acceleration and foreclosure upon default contradict the debtor's rights under the Act and 12 C.F.R. § 590.4(h), and therefore disqualify the transactions for federal usury preemption; and (3) does the type size of the contracts violate the requirements of the Board's prepayment notice regulation, 12 C.F.R. § 590.4(d)?[4]

1. *Neither the Act nor the regulation requires a contractual provision concerning a debtor's right to 30-day notice of default and right to cure.*

As the Board has stated in its *amicus* brief at pp. 6-8 submitted previously to the panel, neither the Act, 12 U.S.C. § 1735f-7 note (c)(2), nor the Board's implementing

---

[4] The Board considers the Barclays and GECC contracts' prepayment notices to be within the requirement of section 590.4(d) for the reasons set forth in the argument and letter opinion of the Office of the General Counsel contained in the Board's brief filed with the panel and resubmitted to the *en banc* panel. The Board readopts that brief.

regulation, 12 C.F.R. § 590.4(h)(1), requires contracts to contain a provision setting out the borrower's right to 30-day notice of default and right to cure. The Act leaves it to the Board to decide how best to implement the provisions of the Act, requiring only that "the terms and conditions of such loan . . . comply with consumer protection provisions prescribed by the . . . Board." 12 U.S.C. § 1735f-7 note (c). The Board's regulation does not require such a provision. If the Board had intended a contractual notice provision requirement, the Board would have expressly so provided, as it did in sections 590.4(d) (prepayment without penalty), (e) (terms of balloon payments), (f) (late charges), and (g) (agreements for deferral of fees). *See* the letter of the Board's General Counsel attached as Exhibit B to the Board's *amicus* brief submitted previously to the panel.

The Board has consistently interpreted its regulations as not requiring contractual disclosure. The Board's interpretation of its regulations is "dispositive" so long as the Board's view of its own regulation is not "demonstrably irrational". *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 565 (1980). The panel agreed that the Board's interpretation was controlling and that disclosure of the rights to notice of default and cure was not required in the contract. *Quiller*, 727 F.2d at 1070-71; *Grant*, 727 F.2d at 1074.

2. *The qualified provisions of the contracts concerning acceleration and foreclosure are not inconsistent with the Board's regulation.*

The Borrowers claim that the provisions in the contracts concerning immediate declarations of default and acceleration are contrary to the rights provided to borrowers by the Act, and that GECC and Barclays are disqualified from obtaining usury preemption. The panel advanced this argument as the basis for its holdings in *Quiller*, 727 F.2d at 1072, and *Grant*, 727 F.2d at 1075. This analysis by the Borrowers and the panel is incorrect.

The language at issue in the Barclays contract is as follows:

> If Customer defaults on any obligation under this contract, or if Holder shall consider the indebtedness or the Collateral insecure, the full balance may, upon election of Holder, without notice, subject to any notice of right to cure, become due and payable, less the required rebate of the Finance Charge. . . . Customer agrees in any such case to pay said amount or, at Holder's election, to deliver the Collateral to Holder, and Holder may, without notice or demand for performance or legal process, peaceably take possession of it and custody of anything found in it.

The language in the GECC contract is as follows:

> The Grants' contract provides in part: In the event of Buyer's default in payment when due, Seller may declare immediately due and payable any and all installments due or to become due hereunder, less the unearned portion of that part of the FINANCE CHARGE designated as Time Price Deferential calculated by the Pro-Rata Method provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right. . . .

Contract language providing for immediate declarations of default and acceleration is not necessarily contrary to the Act and the implementing regulation. Both the Act and the regulation specifically provide for circumstances in which a creditor may in fact act without notice. Overlooked by the Borrowers are the qualifications in the full text of the Act and the regulation. The Act merely requires that the Board issue a regulation that requires "a 30-day notice prior to instituting any action leading to repossession or foreclosure (*except in the case of abandonment or other extreme circumstances*)" 12 U.S.C. § 1735f-7 note (c)(2) (emphasis added). The text of the implementing regulation says that

> *Except in the case of abandonment or other extreme circumstances*, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section.
>
> * * *
>
> *The debtor is not entitled to notice of default more than twice in any one-year period.*

12 C.F.R. § 590.4(h)(1) (emphasis added).

Thus there are three separate circumstances in which a creditor may in fact accelerate, repossess or foreclose without giving the section 590.4(h) notice: (1) abandonment; (2) other extreme circumstances; and (3) upon the debtor's third default in a one-year period. Neither the GECC nor the Barclays contract claims an unqualified right to immediate acceleration, repossession and foreclosure without notice. Both contracts are expressly qualified by any right the borrower may have to notice of right to cure. Whether a debtor is entitled to notice depends on the circumstances surrounding the alleged default. Therefore, the contracts do not controvert the protections of the Act.

Borrowers, and the panel, rely primarily on *General Finance Corp. of Georgia v. Sprouse*, 577 F.2d 989 (5th Cir. 1978), to support this "inconsistency" argument. In the *Sprouse* case, the Fifth Circuit replaced the traditional rules of contract construction with a stricter standard based on state court interpretations of the Georgia Industrial Loan Act, Ga. Code Ann. §§ 7-3-1 *et seq.* (1982) ("GILA"). *Id.* at 993. The court found that because the promissory note and security agreement in question did not together make the full disclosure concerning acceleration required under the GILA, the agreement as a whole was in violation of the GILA. The court then imposed the statutory sanction: loss of principal and accrued interest. *Id.* at 993-94.

Sprouse is a case interpreting state law and is neither controlling nor relevant to the interpretation of the federal statute and regulation at issue here. Moreover, the *Sprouse* decision actually undercuts Borrowers' arguments. Unlike the Barclays and GECC contracts, the contract clause in *Sprouse* did not contain any qualifying language. The court cited *Bragg v. Household Finance Corp.*, 140 Ga. App. 75, 230 S.E.2d 55 (1976), to distinguish the contract at issue in *Sprouse* from contracts that did contain qualifying clauses. *Sprouse*, 577 F.2d at 993-994. Regarding the *Bragg* contract, the Fifth Circuit stated that

> the limitation clause "less any required refund of interest," was "not as clear nor as concise as it might be," 230 S.E.2d at 57, but it nonetheless was more than sufficient to put the debtor on notice that certain interest charges would be refundable under law.

Id. at 994 n.4.

Thus, *Sprouse's* favorable citation of *Bragg* in explicating its ruling clearly demonstrates that these contracts should not be interpreted as contrary to the Act.

Application of the *Sprouse* "average consumer" standard of contract construction to the Act would harm the goals of the Congress in adopting the Act. Preemption was plainly thought essential to assure the availability of financing to relatively low-income mobile home buyers. The penalties for usury are often severe. The "average consumer" test would create great uncertainty among lenders. It would be impossible to know whether particular contract language might be considered too vague or inconsistent with the Act by a particular jury or trial court. Therefore, Borrowers' proposed standard, if adopted by this Court, could seriously reduce the availability of financing to low-income borrowers. This result would be particularly unfair because the Board's guidance to lenders has been that such contractual disclosures are not required. Moreover, such a draconian result is not required to achieve Congress' other goal — providing certain protections to debtors under the Act. Re-

gardless of contract language, a lender cannot qualify for usury preemption if it does not *in fact* provide to borrowers the rights required by the Act.

3. *The Board's regulation protects borrowers by requiring lenders who wish to qualify for usury preemption to afford them all the rights provided by the Act and regulation.*

As discussed in the Board's *amicus* brief filed earlier with the panel, section 590.4(h) does not require contractual notice. The section does, however, require that such notice of default and right to cure be given before a creditor may accelerate, repossess or foreclose (except in the circumstances previously discussed). The regulation prescribes the *act* of giving notice and the form the notice must take. This is a significant right of debtors that must be observed for the federal usury preemption to continue to apply.

The Borrowers have claimed that this is not a right of the debtor under Georgia law unless the right to notice is spelled out in the contract. Borrower's analysis is totally incorrect because a *federal* statute that preempts state law is at issue here. If, in fact, a court finds that the prescribed notice under section 590.4(h) was not provided to the debtor, then the creditor loses its federal preemption of the state usury law. The debtor then has available the full panoply of rights and remedies under the applicable state usury statute.[5]

VI. CONCLUSION

The Board's interpretations of its regulations, 12 C.F.R. §§ 590.4(d) and (h), are correct and in accord with Congres-

---

[5] Allegations are made that Barclays has given a defective section 590.4(h) notice. If true, Barclays would lose its federal preemption. The court must decide whether under the Federal Rules of Civil Procedure such alleged facts should be considered on a review of a motion to dismiss.

sional intent concerning their applicability to the contracts at issue in these cases. The *interpretations are not* "demonstrably irrational" and are to be dispositive of the issues concerning whether the contracts qualify on their face for federal preemption under the Act. The central issue for this Court to resolve is whether Borrowers have properly pleaded a failure by GECC or Barclays to *in fact* provide them the notices required by the Act and regulation.

Respectfully submitted,

Dated: July 20, 1984

Of Counsel:

NORMAN H. RAIDEN
General Counsel

RALPH W. CHRISTY
Deputy General Counsel

/s/
WILLIAM K. BLACK
Associate General Counsel

/s/
DENISE Z. FIELD
Acting Deputy Director
Litigation Division

/s/
JAMES T. LANTELME
Trial Attorney

Federal Home Loan Bank Board
Office of General Counsel
1700 G Street, N.W.
Washington, D.C. 20552
(202) 377-6420

Attorneys for the Amicus

CERTIFICATE OF SERVICE

I certify that on July 20, 1984, I mailed a copy of the Brief On Rehearing Of Amicus Federal Home Loan Bank Board Before The En Banc Panel to the following Attorneys for the parties in these cases.

David E. Hudson
Post Office Box 1564
Augusta, Georgia 30913

John B. Long
Nixon, Yow, Waller & Capers
1500 Georgia Railroad Building
Augusta, Georgia 30901

Thomas W. Tucker
Post Office Box 2426
Augusta, Georgia 30903

Jay M. Sawilowsky
902 Georgia Railroad Bank Bldg.
Augusta, Georgia 30910

Byron Attridge
King & Spaulding
2500 Trust Co. Tower
Atlanta, Georgia 30303

Douglas N. Campbell
Mitchell, Loggins, Campbell
& Elsberry
The Equitable Building, No. 950
100 Peachtree Street
Atlanta, Georgia 30303

Thomas C. Shelton
Kilpatrick & Cody
The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30043

/s/
James T. Lantelme
Trial Attorney

APPENDIX M

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO. 9195-C

ARTHUR QUILLER, LILLIE MAE QUILLER, AND ALL OTHER PERSONS SIMILARLY SITUATED,

Plaintiffs,

vs.

BARCLAYS AMERICAN/ CREDIT, INC.

Defendant.

COMPLAINT

NOW COME Arthur Quiller, Lillie Mae Quiller, and all other persons similarly situated, and bring this their Complaint against Defendant and show:

1. Defendant, Barclays American/Credit, Inc., is a North Carolina corporation with a place of business being located in Richmond County, Georgia, at 917 Reynolds Street, Augusta, Georgia, and is subject to the jurisdiction of this Court.

CLASS ACTION ALLEGATIONS

2. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated as a class action pursuant to Rule 23 of the Georgia Civil Practice Act, O.C.G.A. § 9-11-23. The persons constituting this class are so numerous as to make it impractical to bring all of them before the Court. Plaintiffs will fairly insure the adequate representation of all members of this class. The character of the rights sought to be enforced for the class is several and the object

of the action is the adjudication of claims which do or may affect specific property involved in this action.

3. The class consists of all individuals who meet the following criteria:

(a) Individuals who have within four (4) years of the filing of this action, purchased new mobile homes or new manufactured homes; and

(b) Individuals who have, in connection with the purchase of said mobile homes or manufactured homes, entered into retail instalment contracts on a form similar to that form contract entered into between the named Plaintiffs, Arthur Quiller and Lillie Mae Quiller, and Vintage Enterprises Inc., which contracts did not specify that the purchasers were entitled to a thirty (30)-day notice prior to instituting any action leading to repossession or foreclosure; and

(c) Individuals who have, in connection with the financing of said new mobile homes or new manufactured homes, been charged a finance charge which is in excess of 10% add-on; and

(d) Individuals who have had said contract assigned by the seller of said mobile homes or manufactured homes to the Defendant, Barclays American/Credit, Inc.

4. The named Plaintiffs, on or about the 27th day of June, 1981, entered into a Retail Instalment Contract with Vintage Enterprises Inc., in connection with the purchase of a new 1981 Liberty Mobile Home, all as more fully appears from a copy of said contract attached hereto and marked Exhibit "A", by reference made a part hereof.

5. Said contract is governed by the provisions of the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. § 10-1-30, et seq.

6. Said contract was subsequently assigned by Vintage Enterprises Inc. to Defendant, Barclays American/Credit, Inc.

7. In connection with the sale of said new 1981 Liberty Mobile Home, and in connection with the financing thereof, the Defendant, Barclays American/Credit, Inc., wilfully violated the provisions of the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. § 10-1-30, et seq., by charging a finance charge which amounts to in excess of a 13% add-on rate when the provisions of the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. § 10-1-33(a), limit the finance charge to a 10% add-on rate.

8. The Retail Instalment Contract used by Defendant, Barclays American/Credit, Inc., in connection with this transaction and in connection with the transactions entered into with the unnamed members of this class, does not specifically provide that the buyers, the named Plaintiffs and all other persons similarly situated, are entitled to a thirty (30)-day notice prior to instituting any action leading to repossession or foreclosure.

9. By failing to so specifically provide for said thirty (30)-day notice in said contract, the provisions of Public Law 96-221, Title V, § 501, March 31, 1980, 94 Stat. 161, paragraph A(1) are not applicable to this transaction and the provisions of the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. § 10-1-30, et seq., govern this transaction.

10. The Defendant has wilfully and intentionally charged excessive charges to the named Plaintiffs, Arthur Quiller and Lillie Mae Quiller, and all other persons similarly situated, and have wilfully and intentionally violated the provisions of the Georgia Motor Vehicle Sales Finance Act, O.C.G.A. § 10-1-33.

11. Plaintiffs are entitled to a declaratory judgment declaring that Defendant is barred from the recovery of any finance charges, delinquency charges or collection charges in connection with the contract held by the Defendant and in connection with the contracts entered into with the members of Plaintiffs' class and held by Defendant, and Plaintiffs are entitled to a judgment declaring that all pay-

ments being made on those contracts are to be applied toward the unpaid balance of the purchase price and not for any finance, delinquency or collection charges.

12. The named Plaintiffs and all other persons similarly situated are entitled to a judgment against the Defendant for wilfully violating the provisions of the Georgia Motor Vehicle Sales Finance Act in an amount equal to double the time price differential and any delinquency charge and any attorneys' fees and court costs charged and paid with respect to said transaction.

13. In connection with the named Plaintiffs, the named Plaintiffs are entitled to a judgment in the amount of $63,834.80.

14. The named Plaintiffs believe that Defendant has similarly overcharged in excess of one hundred individuals who are similarly situated to the named Plaintiffs.

15. The named Plaintiffs are fearful that Defendant may attempt to foreclose against members of the class because of alleged defaults when in fact there would be no alleged defaults if payments had been applied only toward the reduction of the principal debt or unpaid balance as opposed to the reduction of the total of payments.

16. If the Defendant repossesses any such mobile home unit from any member of this class, the members of this class will suffer irreparable injury and harm.

17. The named Plaintiffs and all other persons similarly situated are entitled to a temporary restraining order and preliminary injunction restraining and preliminarily enjoining the Defendant from proceeding with any non-judicial foreclosure or repossession of any mobile home unit from the members of Plaintiffs' class, without prior judicial supervision from this Court.

19. The unnamed Plaintiffs do not have an adequate remedy at law to stop any possible non-judicial foreclosure pending the conclusion of this action.

20. Pending the resolution of this action, the Defendant will be collecting monthly payments from the members of this class and, the Defendant should be temporarily restrained and preliminarily enjoined from collecting any such monthly payments on any such tainted Georgia Motor Vehicle Sales Finance Act contract and the named Plaintiffs and the unnamed members of this class should be authorized to make payments into the registry of this Court pending final resolution of this action, or, the Defendant should be required to post a bond or such other security to ensure the named Plaintiffs and unnamed members of this class will be able to recover any funds currently being paid by them to the Defendant on any such afflicted Mobile Home Retail Instalment Contract.

WHEREFORE, Plaintiffs, pray that:

(a) The Court certify this action as a class action pursuant to Rule 23 of the Georgia Civil Practice Act, O.C.G.A. § 9-11-23.

(b) The Court enter a declaratory judgment declaring that the Defendant is barried from collecting any finance charges from the named Plaintiffs and all other persons similarly situated, in connection with their Georgia Mobile Home Retail Instalment Sales contracts.

(c) The named Plaintiffs recover from the Defendant an amount equal to double the time price differential, or $62,844.80, for the Defendant's wilful violation of the Georgia Motor Vehicle Sales Finance Act, and the unnamed members of Plaintiffs' class similarly receive damages against the Defendant in an amount equal to double the time price differential as a result of the Defepnant's wilful violation of the provisions of the Georgia Motor Vehicle Sales Finance Act.

(d) The Defendant be temporarily restrained and preliminarily enjoined from non-judicially foreclosing or repossessing any mobile home from any members of Plaintiffs' class, without prior approval of this Court, and the Defen-

dant be temporarily restrained and preliminarily enjoined from continuing to collect monthly payments on any such tainted Georgia Motor Vehicle Sales Finance Act contracts and that the Court allow the named Plaintiffs and unnamed members of Plaintiffs' class to make monthly payments into the registry of this Court pending final resolution of this action, or that the Court require the Defendant to post adequate security or require Defendant to take such other action to insure the Court that the Defendant will be entitled to respond to any claims for damages under O.C.G.A. § 10-1-38(c).

(e) The named Plaintiffs and all other persons similarly situated be granted such other relief as is just and equitable.

/s/ Jay M. Sawilowsky
JAY M. SAWILOWSKY
902 Georgia Railroad Bank Bldg.
Augusta, GA 30901

/s/ John B. Long
JOHN B. LONG
1500 Georgia Railroad Bank Bldg.
Augusta, GA 30910

ATTORNEYS FOR PLAINTIFFS

STATE OF GEORGIA

COUNTY OF RICHMOND VERIFICATION

PERSONALLY APPEARED before the undersigned attesting authority, Arthur Quiller and Lillie Mae Quiller, who having been duly sworn, state that they have read the attached and foregoing Complaint and that the allegations contained therein are true.

This 16 day of February, 1983.

/s/ Arthur Quiller
ARTHUR QUILLER

SWORN TO, and subscribed before me
this 16 day of February, 1983.

/s/ Jay M. Sawilowsky
JAY M. SAWILOWSKY
Notary Public
Richmond County, Georgia

/s/ Lillie Mae Quiller
LILLIE MAE QUILLER

SWORN TO, and subscribed before me
this 16 day of February, 1983.

/s/ Jay M. Sawilowsky
JAY M. SAWILOWSKY
Notary Public
Richmond County, Georgia

BEST AVAILABLE COPY

RETAIL INSTALMENT CONTRACT

Customer (which also means "debtor" and includes all purchasers jointly and severally) has today purchased from Secured Party, hereinafter called "Seller," on a deferred payment price basis, under the terms and provisions on the face and back of the Security Agreement, hereinafter called "contract" and accepted in its present condition, the following property.

ACCOUNT NO. _____

DATE 6-27-81

NEW OR USED	YEAR AND MAKE OF MOBILE HOME	SERIES NAME (Use No. if applicable)	LENGTH	WIDTH	COLOR	IDENTIFICATION NO. (Serial No.)
New	[illegible]	[illegible]	[illegible]		[illegible]	0021805XAB

EQUIPMENT INCLUDED — 21.66 — 0021805XAB

☐ Air Cond. Unit(s) ☐ Range ☐ Refrigerator ☐ Freezer ☐ Washer ☐ Dryer

☐ Furniture (As per Mfg. floor plan) ☐ Awnings ☐ Skirting ☐ Acc. Shed ☐ Other _____

PROPERTY TO BE KEPT AT	COUNTY OF	If at other than Customer's address, enter location →	NUMBER AND STREET, CITY, STATE AND ZIP CODE
CUSTOMER(S) Name	Arthur [illegible] and Billie [illegible]	CREDITOR (Seller) Name	[illegible] Enterprises Inc. DBA Colonial Mobile Homes Inc.
Number and Street	Rt. # [illegible]	Number and Street	[illegible] Gordon Hwy.
City, State and Zip Code	North [illegible] ZIP CODE	City, State and Zip Code	[illegible], Georgia ZIP CODE

CREDITOR ASSIGNS: BARCLAYSAMERICAN/CREDIT, INC. (SEE ASSIGNMENT BELOW)

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION.

INSURANCE

The purchase of Credit Life or Credit Life and Credit Accident & Health Insurance is not required. Customer, however, having first examined the cost of said insurance, as indicated herein, does voluntarily elect to purchase the following coverages:

☐ Single Decreasing Credit Life Insurance (item 6d) for term of contract on One Customer

signing as a Cost of $ _____

☐ Joint Decreasing Credit Life Insurance (item 6d) for term of contract on Both Customers

signing as a Cost of $ _____

☐ Credit Accident and Health Insurance (item 6e) for term of contract on First Customer

signing as a Cost of $ _____

(Credit Accident and Health Insurance can be purchased only if same form of Credit Life Insurance is elected.) Any insurance elected above will cover only the individual or individuals named in the certificate or policy of insurance.

_____ (Insured) (to be completed by Customer)

_____ Signature of Customer to be insured under other form of Credit Life Insurance and also under Credit Accident and Health Insurance (if elected)

_____ Signature of non-insured Customer (if Single Life authorized) or co-insured under joint Credit Life Insurance (but only if Joint Life authorized)

(NOTE: If insurance is desired, all Customers must execute.)

CANCELLATION: Customer may, within 30 days after receipt of the policies or certificates of insurance, cancel all (but not part) of credit life and credit accident and health insurance or credit life insurance elected above by returning all credit life and credit accident and health insurance certificates received in connection with this contract to the Assignee of this contract and having all parties obligated on this contract agree in writing to such cancellation. Upon cancellation, the cost of such insurance shall be refunded or credited to the account.

Customer has the right to choose the agent or company through which Property or Physical Damage Insurance (Items 6f and 6g) is to be obtained. The total cost of such insurance, if obtained through Seller, is $ 432.00 for a term of _____ months from the date hereof.

IF PHYSICAL DAMAGE INSURANCE NOT INCLUDED HEREIN, CUSTOMER HAS PURCHASED SAME FROM

William H. Kennedy
(Agent's Name)
Atlanta Georgia
(Agent's Address)
American National Insurance
(Name of Insurance Company)

1. Cash Price (including sales tax)	$ 19754.80
2. Cash Downpayment	$ 4191.80
Trade-in: Year & Make _____	
Allowance: Gross $ _____ Amt. Owing $ _____ Net	$ .00
Amount owing on trade-in to be paid by ☐ Seller ☐ Customer	
Total Downpayment	$ 4191.80
3. Unpaid Balance of Cash Price (item (1) minus item (2))	$ 15561.00
4. Fees Disbursed By Seller For Customer:	
a. Title Fee $ _____ b. License Fee $ _____ (Sum of items (4a) and (4b))	$ .00
5. Unpaid Balance of Cash Price Plus Fees Disbursed by Seller (Sum of items (3) and (4)) (Proceeds to Seller) →	$ 15561.00
6. Other Charges:	
a. Recording Fee Title : 0021	$ 7.00
b. Documentary Stamps	$ .00
c. Other Fees (Describe) _____	$ .00
d. Credit Life Insurance Premium	$ .00
e. Accident & Health Insurance Premium	$ .00
f. Other Ins. Premium (Describe) PI	$ 32.20
g. Physical Damage Insurance Premium for the following coverages and for a term of _____ months	$ _____
☐ Comprehensive Coverage ☐ Secured Interest Protection	
☐ Comprehensive Personal Liability ☐ Natural Disaster Protection	
☐ Personal Effects ☐ Other (Describe) _____	
Total Other Charges (Sum of items 6(a), (6b), (6c), (6d), (6e), (6f) and (6g))	$ 439.00
7. Unpaid Balance: Amount Financed (Sum of items (3) and (6))	$ 16000.00
8. **FINANCE CHARGE**	$ 31417.40
ANNUAL PERCENTAGE RATE: 18.50 %	
9. Total of Payments (Sum of items (7) and (8))	$ 47417.40
10. Deferred Payment Price (Sum of items (1), (4), (6) and (8))	$ 51611.20

DATE FINANCE CHARGE BEGINS TO ACCRUE, if Different from Date of Contract _____, 19__
(If a date inserted here, this is the estimated delivery date of the property.)

SCHEDULE OF PAYMENTS

Customer agrees to pay Total of Payments (item 9 above) in _____ monthly instalments as follows:

(Check one box only)

☐ A first instalment of $ _____

☐ A final instalment of $ _____

☐ A final instalment consisting of a BALLOON PAYMENT of $ _____ (Insert as a BALLOON PAYMENT if the amount of the last instalment is more than twice the amount of any regularly scheduled equal instalment.) A BALLOON PAYMENT may be refinanced only upon such terms and conditions as the then parties to the contract may agree on at its due date.

☒ 179 instalments of $ 262.43 each, all subsequent payments payable the 1st day (or if no 1st date, then on last day) of each successive month beginning _____, 19__, or if no date is specified, one month after the date of this contract. If unequal, irregular or other than monthly instalment(s) are shown below, they shall be made in addition to the instalments shown above or, if no instalments are shown above, such unequal or irregular payments shall be controlling as to the manner of payment.

AND

$ _____	on _____, 19__	$ _____	on _____, 19__
$ _____	on _____, 19__	$ _____	on _____, 19__

*If an asterisk (*) appears beside any unequal, irregular or other than monthly instalments, such payment is a BALLOON PAYMENT, which may be refinanced as stated above for a final instalment BALLOON PAYMENT.

DELINQUENCY CHARGE: If an instalment is in default 15 days or more, the Holder may charge and collect a delinquency charge not to exceed 5% of the instalment or $5, whichever is less. Upon such delinquency, Holder may, subject to any notice of right to cure, accelerate the unpaid balance of the contract, in which event the unpaid balance, less the rebate of Finance Charge described below and rebate of any unearned insurance premiums included in this transaction, is due and payable. In connection with such delinquency, acceleration, or any repossession, Holder may collect reasonable attorney's fees (15% if not prohibited by law), if referred to an attorney not a salaried employee of Holder, and court costs.

PREPAYMENT: CUSTOMER HAS THE RIGHT TO PREPAY IN FULL OR IN PART THE UNPAID BALANCE OF THIS CONTRACT AT ANYTIME WITHOUT PENALTY. Upon prepayment in full, Customer shall be entitled to a rebate of the unearned portion of the Finance Charge computed by the actuarial method, except that no rebate of less than $1 will be given.

SECURITY INTEREST: Holder (meaning Seller, or its assignee if this contract is assigned) is granted and shall retain a security interest and lien inferior to the following described property to secure this transaction and any renewal, extension or refinancing (NOTE: Applicable only if marked):

☒ 1. A purchase money security interest, pursuant to the Uniform Commercial Code and in accordance with the Security Agreement set forth on the reverse side, in the above described property and all equipment, tires, accessories, parts, radios, televisions, furniture, appliances and attachments now or later attached to it, but only if such additions, accessions under the Uniform Commercial Code, and the proceeds of the foregoing, all referred to in the Security Agreement on the reverse side as "Collateral"; and

☐ 2. A Deed to Secure Debt (or Mortgage) lien on Customer's real property located at the above address on which the above described property will be placed (or is or will be located on a different address, real property located at _____.

The lien interest is evidenced by a Deed to Secure Debt (or Mortgage), a copy of which is attached hereto and made a part hereof.

☒ 3. The proceeds of any physical damage insurance covering the Collateral, the proceeds of any credit life or credit accident and health insurance referred to by the Contract, returned or unearned premiums of such insurance.

☒ 4. Customer's execution of this agreement constitutes a waiver of Customer's personal property and homestead exemption rights to the personal and real property hereinabove described.

CUSTOMER AGREES TO ABIDE BY THE TERMS OF THE SECURITY AGREEMENT ON THE REVERSE SIDE.

Customer, having been quoted both a deferred payment price and a cash price, has elected to buy the property for the above stated deferred payment price.

NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.

Accepted: The foregoing contract is hereby assigned to the Assignee named on the reverse side of this original contract.

BARCLAYSAMERICAN/CREDIT, INC.
613 REYNOLDS STREET

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT WHICH WAS COMPLETELY FILLED IN AT THE TIME OF CUSTOMER'S EXECUTION HEREOF.

☐ Credit Accident and Health Insurance (see 6a. for term of contract on Pint Customer

signing or a Cost of $ _____

(Credit Accident and Health Insurance can be purchased only if same form of Credit Life Insurance is elected.) Any insurance elected above will cover only the individual or individuals named in the certificate or policy of insurance.

Date: _____ (to be completed by Customer)

Signature of Customer to be insured under either form of Credit Life Insurance and also under Credit Accident and Health Insurance (if elected)

Signature of Insurable Customer (if Single Life authorized) or Insurable Joint Life Credit Life Insurance (if only if Joint Life married)

(NOTE: If insurance is desired, all Customers must subscribe.)

CANCELLATION: Customer may, within 30 days after receipt of the policies or certificates of insurance, cancel all (but not part) of credit life and credit accident and health insurance or credit life insurance elected above by returning all credit life and credit accident and health insurance certificates received in connection with this contract to the Assignee of this contract and having all parties obligated on this contract agree in writing to such cancellation. Upon cancellation, the cost of such insurance shall be refunded or credited to the account.

Customer has the right to choose the agent or company through which Property or Physical Damage Insurance (Items 6f and 6g) is to be obtained. The total cost of said insurance, if obtained through Seller, is $ 432.00 for a term of _____ months from the date hereof.

IF PHYSICAL DAMAGE INSURANCE NOT INCLUDED HEREIN, CUSTOMER HAS PURCHASED SAME FROM

William H. McCormick
(Name of Insurance Agent)

Atlanta Georgia
(Agent's Address)

American Modern Homes
(Name of Insurance Company)

DELINQUENCY CHARGE: If an instalment is in default 15 days or more, the Holder may charge and collect a delinquency charge not to exceed 5% of the instalment or $5, whichever is less. Upon such delinquency, Holder may, subject to any notice of right to cure, accelerate the unpaid balance of the contract, in which event the unpaid balance, less the rebate of Finance Charge described below and rebate of any unearned insurance premiums included in this transaction, is due and payable. In connection with such delinquency, acceleration, or any repossession, Holder may collect reasonable attorney's fees (15% if not prohibited by law), if referred to an attorney not a salaried employee of Holder, and court costs.

PREPAYMENT: CUSTOMER HAS THE RIGHT TO PREPAY IN FULL OR IN PART THE UNPAID BALANCE OF THIS CONTRACT AT ANYTIME WITHOUT PENALTY. Upon prepayment in full, Customer shall be entitled to a rebate of the unearned portion of the Finance Charge, as required by the actuarial method, except that no rebate of less than $1 will be given.

SECURITY INTEREST: Holder (meaning Seller, or its assignee if this contract is assigned) is granted and shall retain a security interest and lien interest in the following described property to secure this transaction and any renewal, extension or refinancing (NOTE: Applicable only if marked):

☐ 1. A purchase money security interest, pursuant to the Uniform Commercial Code and in accordance with the Security Agreement set forth on the reverse side, in the above described property and all equipment, tires, accessories, parts, radios, televisions, furniture, appliances and attachments now or later attached to it, but only if such is permissible under the Uniform Commercial Code, and the proceeds of the foregoing (all referred to in the Security Agreement on the reverse side as "Collateral").

☐ 5. A Deed to Secure Debt (or Mortgage) lien on Customer's real property located at the above address on which the above described property will be physically or at a different address, real property located at: _____

This lien interest is evidenced by a Deed to Secure Debt (or Mortgage), a copy of which is attached hereto and made a part hereof.

☐ 3. The proceeds of any physical damage insurance covering the Collateral, the proceeds of any credit life or credit accident and health insurance collected by the Customer, and refunded or unearned premiums of such insurance.

☐ 4. Customer's execution of this agreement constitutes a waiver of Customer's personal property and homestead exemption rights to the personal and real property herein described.

CUSTOMER AGREES TO ABIDE BY THE TERMS OF THE SECURITY AGREEMENT ON THE REVERSE SIDE.

Customer, having been quoted both a deferred payment price and a cash price, has elected to buy the property for the above stated deferred payment price.

NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.

Accepted: The foregoing contract is hereby assigned on for the terms of the assignment on the reverse side to the following Creditor.

BARCLAYSAMERICAN/CREDIT, INC.
917 REYNOLDS STREET
AUGUSTA, GEORGIA 30902

Vintage Enterprises Inc. D/B/A
Colonial Mobile Homes Inc.

By: _____ Title: Mgr

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT WHICH WAS COMPLETELY FILLED IN PRIOR TO CUSTOMER'S EXECUTION HEREOF.

Walter Powell
CUSTOMER

Sallie Powell
CUSTOMER

CONSENT TO DEED TO SECURE DEBT (OR MORTGAGE) IN SPOUSE

In consideration of Seller's entering into this transaction with Customer, the undersigned hereby consents to the Deed to Secure Debt (or Mortgage) interest on the real property described above and agrees to sign a Deed to Secure Debt (or Mortgage) to evidence this consent.

WITNESS _____ SIGNATURE _____

WITNESS _____ SIGNATURE _____

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

ORIGINAL – FILE IN FIREPROOF FILE CABINET

a. Recording Fee $ 2.00
b. Documentary Stamps $ .00
c. Other Fees (Describe) $ .00
d. Credit Life Insurance Premium $ .00
e. Accident & Health Insurance Premium $ .00
f. Other Ins. Premium (Describe) PL $ 432.00
g. Physical Damage Insurance Premium for the following coverages and for a term of _____ months $ _____

☐ Comprehensive Coverage ☐ Secured Interest Protection
☐ Comprehensive Personal Liability ☐ Natural Disaster Protection
☐ Personal Effects ☐ Other (Describe) _____

Total Other Charges (Sum of items (6a), (6b), (6c), (6d), (6e), (6f) and (6g)) $ 439.00
7. Unpaid Balance Amount Financed (Sum of items (3) and (6)) $ 16000.00
8. **FINANCE CHARGE** $ 31812.40
ANNUAL PERCENTAGE RATE: 18.52 %
9. Total of Payments (Sum of items (7) and (8)) $ 47812.40
10. Deferred Payment Price (Sum of items (1), (4), (6) and (9)) $ 51611.20

DATE FINANCE CHARGE BEGINS TO ACCRUE, if Different From Date of Contract _____, 19__
(If a date inserted here, this is the estimated delivery date of the property.)

SCHEDULE OF PAYMENTS

Customer agrees to pay Total of Payments (item 9 above) in _____ monthly instalments as follows:

(Check one block only) ☐ A first instalment of $ 261.43
☐ A final instalment of $ _____
☐ A final instalment consisting of a BALLOON PAYMENT of $ _____
(Insert as a BALLOON PAYMENT if the amount of the last instalment is more than twice the amount of any regularly scheduled equal instalment.) A BALLOON PAYMENT may be refinanced only upon such terms and conditions as the then parties to the contract may agree as of its due date.

☒ 180 instalments of $ 262.43 each, all instalments payable the 7th day of each month, beginning on last day(s) of each successive month beginning 11-7- 19 91, or if no blank is filled in, one month after the date of this contract, if unequal, irregular or other than monthly instalments are shown below, they shall be made in addition to the instalments shown above or, if no instalments are shown above, such unequal or irregular payments shall be controlling as to the manner of payment:

$ _____ on _____, 19__ $ _____ on _____, 19__
$ _____ on _____, 19__ $ _____ on _____, 19__

*If an asterisk (*) appears beside any unequal, irregular or other than monthly instalments, such instalment is a BALLOON PAYMENT, which may be refinanced as stated above for a final instalment BALLOON PAYMENT.

BEST AVAILABLE COPY

BEST AVAILABLE COPY

M-10

NOTICE OF PROPOSED CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Credit life and credit accident and health insurance is included in this transaction only if a charge therefor is set forth herein, as indicated in the "Insurance" section on the reverse side, subject to acceptance by the insurer. The Citadel Life Insurance Company, P. O. Box 31488, Charlotte, North Carolina 28231 (for credit life and credit accident and health insurance on Motor Vehicle and Recreational Vehicle Contracts), or Foremost Life Insurance Company, P. O. Box 2450, Grand Rapids, Michigan 49501 (for credit life insurance on all Mobile Home Contracts and Recreational Vehicle Contracts if the total of payments shown on the reverse side exceeds $10,000), as applicable. The amount of premiums and the type of insurance purchased are set out on the reverse side in the "Insurance" section. Such insurance will cover only the individual(s) designated and signing as insured in the "Insurance" section set forth on the reverse side, such signature(s) also constituting signed acceptance by such individual(s) of this notice. The term of such insurance will commence on the date the indebtedness is incurred and will be the same as the term of the indebtedness, which is set forth on the reverse side. The amount of credit life insurance will pay Holder (creditor) the amount of indebtedness, if any, owing at the time of death subject to a maximum amount under the applicable group policy of $20,000 (The Citadel Life Insurance Company),or $30,000 (Foremost Life Insurance Company), as applicable. The amount of credit accident and health insurance will pay Holder monthly benefits in installments equivalent to the monthly payments required under the contract for the term of any disability covered by the policy, subject to a maximum amount of the smaller of either the initial amount of indebtedness (total of payments shown on reverse side) or $10,000 under the group policy. All such insurance proceeds will be applied to reduce or discharge the indebtedness. If insurance is declined by the insurer or otherwise does not become effective, any premium therefor will be credited or paid to the individual(s) entitled thereto and if insurance is terminated prior to the scheduled maturity date of the indebtedness, any premium refund due will be credited or paid promptly to the individual(s) entitled thereto, the refund being computed in accordance with the refund formulas on file with the state Insurance Department. In order to induce insurer to effect any such insurance, the individual(s) desiring such coverage declares to the best of his knowledge and belief that he is now in good health and he authorizes any physician or hospital to disclose to insurer, in the event of his death or disability, all information concerning his death or disability as well as his medical history prior to the date of this transaction. All the foregoing is subject to all terms, conditions and provisions of the policies or certificates to be issued.

SECURITY AGREEMENT

The Collateral shall be at Customer's risk and Customer shall procure and maintain for the term hereof insurance against all physical damage risks at Customer's expense in such form and for such amounts as Holder may require, the proceeds thereof to be payable as interest shall appear with mortgagee's loss payable clause attached. Holder may, as creditor of Customer, purchase such insurance effective thereafter, although nothing herein contained shall impose a duty upon Holder to do so. Customer will reimburse Holder for the actual cost of such insurance to the extent that the same is not included in the deferred payment price, the amount of such reimbursement together with a Finance Charge at the highest lawful rate, to be paid in equal installments over the remaining term concurrently with the remaining unpaid instalments set forth above, and to constitute an additional obligation of Customer hereunder. Customer hereby assigns to Holder any moneys not in excess of the unpaid balance hereunder which may become payable under such and other insurance, including refunds or unearned premiums, and directs any insurance company to make payments directly to Holder to be applied to said unpaid balance and appoints Holder as attorney in fact to endorse any draft in the event at any default under this contract. Holder is authorized to cancel said insurance and credit any premium refund received against said unpaid balance.

Customer agrees to pay promptly all taxes and assessments upon the Collateral and for its use or operation and on this contract to keep the Collateral in good condition and free from liens, liabilities, claims or charges of any kind, that all equipment, tires, accessories, parts, radios, and attachments installed in or affixed to the Collateral shall, as defined by the Uniform Commercial Code, become part of the Collateral by accession, not to sell, encumber or abandon the Collateral or use it for hire, charter or illegally, not to remove or attempt to remove said Collateral from the county and state given above as Customer's address without notifying Holder in writing and not remove the Collateral from the continental United States without the Holder's express written consent; to keep and maintain the Collateral as personal property only and not to allow it to become part of any freehold; to send notice by registered mail to Holder after repossession but before resale of the Collateral if Customer claims that any articles not included herein were personal as the Collateral at the time of repossession; failure to do so barring a waiver of said bar to any subsequent claim thereof. Any notice to Customer shall be sufficiently given if mailed to the address of Customer stated herein.

Time is of the essence. Holder may collect a delinquency and collection charge on each instalment in default for 15 days or more in an amount not exceeding 5% of each said instalment of $5, whichever is less. If Customer defaults on any obligation under this contract, or if Holder shall consider the indebtedness or the Collateral insecure, the full balance may, upon election of Holder, without notice, subject to any notice of right to cure, become due and payable, less the required rebate of the Finance Charge, and rebate of any unearned insurance premiums included in this transaction, together with reasonable attorney's fees (15% if not prohibited by law) if this contract is referred for collection to an attorney, plus court costs. Customer agrees in any such case to pay said amount or, at Holder's election, to deliver the Collateral to Holder, and Holder may, without notice or demand for performance or legal process, peaceably enter any premises, but not into any dwelling, where the Collateral may be found, peaceably take possession of it and custody of anything found in it. Upon default Holder shall have all of the remedies of a secured party under the Uniform Commercial Code. The Collateral may be sold, leased or otherwise disposed of with or without notice publicly or privately, with or without having the Collateral at the sale and Holder may acquire the Collateral at any such disposition. The proceeds of disposition less all expenses of retaking, holding, repairing and selling, and to the extent permitted by applicable law, attorney's fees and legal expenses incurred by the Holder shall be credited to the unpaid balance due hereunder. Customer is liable for, and shall forthwith pay any deficiency. any surplus shall be paid to Customer. It is agreed that sale to a dealer is a commercially reasonable method of disposition, and that if prior notice to Customer of a sale or other intended disposition of the Collateral is required, 5 days notice to Customer is reasonable notice.

If Seller assigns this contract, Seller shall not be assignee's agent after transmission of payments or for any purpose.

Waiver of any default or acceptance of any past due payment shall not be a waiver of any subsequent or any other default. Holder's rights and remedies hereunder are cumulative. If any part of this contract is invalid, unenforceable or inconsistent with the applicable laws or regulations of the State of Seller's address herein, such part shall be deemed amended, modified or deleted to conform thereto.

No change in this contract shall be binding unless in writing and any agreement, representation or warranty shall be binding on the Holder unless expressly contained herein.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

GUARANTY

In consideration of the acceptance of the instrument on the reverse side hereof, or its purchase by any assignee, we jointly and severally guarantee to any Holder the payment promptly when due of every instalment thereunder and the payment on demand of the entire unpaid balance and all other obligations of Customer thereunder, including reasonable attorney's fees, if Customer defaults in any payment of any instalment at its due date or in any other manner without first requiring Holder to proceed against Customer. We warrant that the contract is genuine, legally valid and enforceable and waive notice of acceptance hereof and of defaults thereunder and consent that Holder may, without affecting our liability, compromise or release, by operation of law or otherwise, any rights against and grant extensions of time of payment to Customer and other obligors. If we default on any obligation under this Guaranty and Holder refers the same to an attorney for collection, we shall also be liable to and pay Holder attorney's fees (15% of the amount in default, if not prohibited by law), court costs and disbursements. Witness our hands and seals.

CORPORATE GUARANTOR

_____ (SEAL)

BY _____ (SEAL)

INDIVIDUAL GUARANTOR

_____ (SEAL)

TERMS OF SELLER'S ASSIGNMENT

Wadsworth sell and assign the contract on the reverse side and all interest in the property described on the front hereof, together with any Deed to Secure Debt (or Mortgage) given as security for this contract, and our rights under any guaranty to Assignee [illegible] on the front hereof (hereinafter called "you") without recourse as to Customer's obligation of payment except as may be otherwise provided in any underlying agreement between us, with full power to you in your or our name to collect and discharge the same and to take all such legal or other proceedings as we might take save for this assignment. We warrant that the contract, Deed of Secure Debt (or Mortgage) and any guaranty are genuine, legally valid and enforceable; we have complied with all disclosure requirements imposed by the applicable Federal and State laws and Regulations; we have complied with all applicable Federal and State Laws and Regulations relating to this contract and the establishment of the contract and any Deed to Secure Debt (or Mortgage) given as security hereto; we hereby convey good title thereto; all statements of facts thereon are true; the Customer was quoted the cash price and the deferred payment price as stated therein; no part of the down payment shown on page 1 is owing by loan or note and any trade-in shown was received by us from the Customer as stated therein; all instruments made by Customer in any form constituting chattel security are true to our knowledge and Holder's [illegible] Deed to Secure Debt (or Mortgage) taken as security [illegible] Customer and [illegible] with the [illegible]

...and credits any premium refund received ... [illegible] ...

...or agrees to pay promptly all taxes and ... [illegible] ... upon the Collateral and for its use or operation and on this contract; to keep the Collateral in good condition and free from liens, labels, claims or charges of any kind, that all equipment, tires, accessories, parts, radios and attachments installed in or affixed to the Collateral shall, as defined by the Uniform Commercial Code, become part of the Collateral by accession; not to sell, encumber or abandon the Collateral or use it for hire, charter or illegally; not to remove or attempt to remove said Collateral from the county and state given above as Customer's address without notifying Holder in writing and not remove the Collateral from the continental United States without the Holder's express written consent; to keep and maintain the Collateral as personal property only and not to allow it to become part of any freehold; to insist notice by registered mail to Holder after repossession but before resale of the Collateral if Customer claims that any articles not included herein were contained in the Call Journal at the time of repossession, failure to do so being a waiver of and bar to any subsequent claim thereto. Any notice to Customer shall be sufficient, given if mailed to the address of Customer stated herein.

...requiring and using, and to the extent permitted by applicable law, attorney's fees and legal expenses incurred by the Holder shall be credited to the unpaid balance due hereunder. Customer is liable for, and shall forthwith pay any deficiency; any surplus shall be paid to Customer. It is agreed that sale to a dealer in a commercially reasonable method of disposition, and that if prior notice to Customer of a sale or other intended disposition of the Collateral is required, 5 days' notice to Customer is reasonable notice.

If Seller assigns this contract, Seller shall not be assignee's agent for transmission of payments or for any purpose.

Waiver of any default or acceptance of any past due payment shall not be a waiver of any subsequent or any other default. Holder's rights and remedies hereunder are cumulative. If any part of this contract is invalid, unenforceable or inconsistent with the applicable laws or regulations of the State of Seller's address herein, such part shall be deemed amended, modified or deleted to conform thereto.

No change in this contract shall be binding unless in writing and no agreement, representation or warranty shall be binding on the Holder unless expressly contained herein.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

GUARANTY

In consideration of the acceptance of the instrument on the reverse side hereof, or its purchase by any assignee, we jointly and severally guarantee to any Holder the payment promptly when due of every installment thereunder and the payment on demand of the entire unpaid balance and all other obligations of Customer thereunder, including reasonable attorney's fees, if Customer defaults in any payment of any installment or its due date or in any other manner, without first requiring Holder to proceed against Customer. We warrant that the contract is genuine, legally valid and enforceable and waive notice of acceptance hereof and of default thereunder and consent that Holder may, without affecting our liability, compromise or release, by operation of law or otherwise, any rights against and grant extensions of time of payment to Customer and other obligors. If we default on any obligation under this Guaranty and Holder refers the same to an attorney for collection, we shall also be liable to and pay Holder attorney's fees (15% of the amount in default, if not prohibited by law), court costs and disbursements. Witness our hands and seals.

CORPORATE GUARANTOR

_____ (SEAL)
NAME OF GUARANTOR

BY _____
TITLE

INDIVIDUAL GUARANTOR

_____ (SEAL)
NAME

_____ (SEAL)
NAME

TERMS OF SELLER'S ASSIGNMENT

We hereby sell and assign the contract on the reverse side and all interest in the property described on the front hereof, together with any Deed to Secure Debt (or Mortgage) given as security for this contract, and our rights under any guaranty to Assignee shown on the front hereof (hereinafter called "you") without recourse on us to Customer's obligation of payment, except as may be otherwise provided in any underlying agreement between us, with full power to you in your or our name to collect and discharge the same and to take all such legal or other proceedings as we might take, save for this assignment. We warrant that the contract, Deed of Secure Debt (or Mortgage) and any guaranty are genuine, legally valid and enforceable; we have complied with all disclosure requirements imposed by the applicable Federal and State Laws and Regulations; we have complied with all applicable Federal and State Laws and Regulations relating to the contract and the establishment of the contract and any Deed to Secure Debt (or Mortgage) given as security herein; we have not required Customer to purchase credit insurance; no part of the down payment shown as paid in such a contract and any Deed to Secure Debt (or Mortgage) given as security herein; we have not required Customer to purchase credit insurance; no part of the down payment shown as paid in such a therein are true; the Customer was quoted the cash price and the deferred payment price as stated therein; no part of the down payment shown as paid in such a owing by loan or note and any trade-in shown was received by us for the allowance agreed therein; all statements made by Customer on any forms related thereto are true to our knowledge and belief; we have clear title to the property, free of all liens and encumbrances, except for this contract, any Deed to Secure Debt (or Mortgage) taken as security for this contract has been duly recorded and is a first lien or encumbrance on the property described, except as expressly noted thereon; Customer is not a minor and has capacity to contract; Certificate of Title showing the first lien or encumbrance in your favor has been or will be forthwith obtained; with the lien thereon perfected as of the date of the contract, if permitted by law. We further warrant and agree to abide by all agreements, warranties or guarantees, either express, implied or required by law, afforded Customer relative to the property described on the front hereof. All warranties herein contained are made to induce you to purchase this contract and if there is a breach of any, or if Customer withholds payment as required under the contract, because Customer alleges a claim, defense or set off against us, without regard to your or our knowledge or lack of knowledge with respect thereto or your reliance thereon, we will on demand purchase this contract from you for the balance then remaining unpaid, plus any and all costs and expenses paid or incurred in respect thereto, as aforesaid. If Customer recovers any amounts from you as a result of such claim, you will reimburse you for such amounts paid to Customer. We waive all demands and notice of default and consent that, without notice to us, you may extend time to or compound or release, by operation of law or otherwise, any rights against Customer or any other obligor. If we execute any guaranty covering this transaction, the words "without recourse on its Customer's obligation of payment" are deemed delivered, and, notwithstanding the provisions of any underlying agreement whatsoever between us, your recourse on us on the assignment shall be as stated in such guaranty. If we did not execute any such guaranty and have no underlying agreement with you governing our assignment to you in your standard full recourse form. Notwithstanding anything in this assignment, this contract shall be deemed sold to you, as to re-purchase, with our assignment to you in your standard full recourse form.

(See other side for Seller's signature to assignment)

BEST AVAILABLE COPY